



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:05.09.2017

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

CRL.O.P.(MD)No.11697 of 2017 and
Crl.M.P(MD).No.8055 of 2017

1.Sundarapandia Raj
2.Seetha Lakshmi
3.Pandima Devi

: Petitioners/Accused Nos.1 to 3

-Vs-

the State rep. by
The Inspector of Police,
All Women Police Station,
Srivilliputur,
Virudhunagar District.
(Crime No. 10 of 2012)

: Respondents

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 26.05.2017 in Crl.M.P.No.3182 of 2017 in C.C.No.160 of 2012 on the file of the Judicial Magistrate No.II, Srivilliputur, Virudhunagar District and direct the Court below to recall the prosecution witnesses for cross examination.

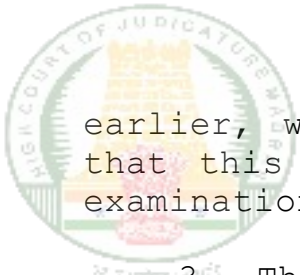
For Petitioner
For Respondent

: Mr.C.T. Perumal
: Mr.K.Anbarasan,
Government Advocate(Crl.Side)

O R D E R

This petition is filed to set aside the order passed by the learned Judicial Magistrate No.II, Srivilliputur, dated 26.05.2017 in Crl.M.P.No.3182 of 2017 in C.C.No.160 of 2012.

2. The petitioners are accused nos. 1 to 3 in C.C.No.160 of 2012. The petitioners earlier filed a petition to recall PW.1 and PW.2 in Crl.M.P.No.3075 of 2016 and that petition was allowed on payment of cost of Rs.1,000/- to the Legal Aid Centre. The said petition was ultimately dismissed for default on account of non payment of cost. Suppressing the same, the petitioners herein have filed another petition in Crl.M.P.No.3182 of 2017 and the same was also dismissed, mainly on the ground that the petitioners have suppressed the fact that similar petition was filed by them



earlier, was dismissed for default. Further, it is also stated that this petition is filed after three years from the date of examination of the witnesses cannot be permitted.

3. The fact that the petitioners have made out a ground earlier to recall the witnesses PW.1 and PW.2, cannot be disputed. This petition is filed to recall PW.1 to PW.8 and that dismissal of the earlier petition to recall PW.1 and PW.2 cannot be a ground to dismiss the petition. The fact that the petitioners have filed the present petition in CrI.M.P.No.3182 of 2017, three years after examination of the witnesses is a relevant circumstance to doubt the bonafides of the petitioners. However, having regard to the facts and circumstances of the case, this Court is inclined to give one more opportunity to the petitioners to recall the witnesses and cross examine them subject to payment of cost.

4. Accordingly, the Criminal Original Petition is allowed and the order passed by the learned Judicial Magistrate No.II, Srivilliputur in CrI.M.P.No.3182 of 2017 is set aside and the petition filed by the petitioners in CrI.M.P.No.3182 of 2017 stands allowed. Further, the petitioners are directed to cross examine the witnesses on the date, when the witnesses are available for cross examination. Consequently, connected Miscellaneous Petition is closed.

5. This order is also subject to payment of cost of Rs.5,000/- (Rupees Five Thousand only) to the credit of the Hon'ble Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai, within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CrI Side)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Srivilliputur,
Virudhunagar.
2. -Do- Through Chief Judicial Magistrate,
Virudhunagar.
3. The Inspector of Police,
All Women Police Station,
Srivilliputur,
Virudhunagar District.



4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Section Officer,
Account Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.C.T. Perumal, ADVOCATE IN SR No.76527

trp

MK/SV MMS/SAR-3/3P/6C/15.09.2017

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