



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.10.2017

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Crl.O.P.(MD) No.13932 of 2017

WEB COPY

1.Suja
2.Joseph Gabriel ...Petitioners / Petitioners /
Accused No.1 and 2
-Vs-

The Inspector of Police,
All Women Police Station,
Nagercoil.

(The State Rep. By
Assistant Public Prosecutor) ... Respondents / Respondents/
Complainants

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records of the order dated 28.09.2017 in Cr.M.P.No.4509 of 2017 in C.C.No.78 of 2011 on the file of the Judicial Magistrate No.II, Nagercoil and set aside the same.

For Petitioners :Mr.N.Juliet Latha
For Respondent :Mr.K.S.Durai Pandian
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order dated 28.09.2017 in Cr.M.P.No.4509 of 2017 in C.C.No.78 of 2011 on the file of the Judicial Magistrate No.II, Nagercoil.

2.Heard the learned Counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

3.On the basis of the complaint lodged by the daughter in law of the first petitioner, a case was registered in Crime No.3 of 2010 by the first respondent police for the offences punishable under Sections 498(A) and 406 IPC and Sections 4 and 6 of Dowry Prohibition Act. It is seen that before the Trial Court, the petitioners were originally arrayed as A2 and A3 and they were subsequently arrayed as A1 and A2, after the case was split up into C.C.No.78 of 2011 and C.C.No.249 of 2013.

<https://hcservices.ecourts.gov.in/hcservices/>

4.Before the Trial Court, PW-1and PW-2 were examined on



16.02.2017, nearly after a period of six years from the date of complaint. The petitioners themselves admit that they had not filed any application immediately after recording the evidence. As a matter of fact that when the witnesses were available for cross examination, the petitioners failed to avail the opportunity for cross examining both the witnesses. After sometime, the petitioners filed a petition under Section 311 of Cr.P.C., in Cr.M.P.4509 of 2017 in C.C.No.78 of 2011, to recall the witnesses PW-1 and PW-2 for cross examination. The lower Court was pleased to dismiss the petition on the ground of inordinate delay. It is to be noted that the petitioner had filed a quash petition before this Court and the delay is therefore sought to be explained by stating the pendency of this petition.

5. Having regard to the nature of case and the order passed by the lower Court, this Court is of the view that a fair opportunity should be given to the petitioners to defend their case. Since the witnesses PW-1 and PW-2 are crucial and cross examination of the two witnesses is very much important to the petitioners and refusing to avail the opportunity will certainly cause prejudice. Hence this Criminal Original Petition is allowed and the order passed by the Lower Court in Cr.M.P.No.4509 of 2017 in C.C.No.78 of 2011 is set aside and the application filed by the petitioner under Section 311 of Cr.P.C., Cr.M.P.No.4509 of 2017 in C.C.No.78 of 2011 stands allowed, subject to the condition that the petitioners shall cross examine PW-1 and PW-2, as and when they are available for cross examination without asking further adjournments.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
All Women Police Station,
Nagercoil.

(The State Rep. By
Assistant Public Prosecutor)

2. The Judicial Magistrate No.II,
Nagercoil.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
+1cc to Mr.N.JULIET LATHA, Advocate, SR.82843

CrI.O.P. (MD) No.13932 of 2017
13.10.2017