



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.OP.(MD) No.14540 of 2017
and
Crl.M.P.(MD)No.9689 of 2017

1.Ayyar
2.Chinnadurai
3.Paulraj
4.Muthu

... Petitioners / Petitioners / Accused

Vs.

State represented though
The Inspector of Police,
Devakottai Taluk Police Station,
Tirunelveli District. ... Respondent

PRAYER: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the impugned order dated 07.08.2017 passed by the Judicial Magistrate Court, Devakottai in Cr.M.P.No.1560 of 2017 in C.C.No.57 of 2009 and set aside the same.

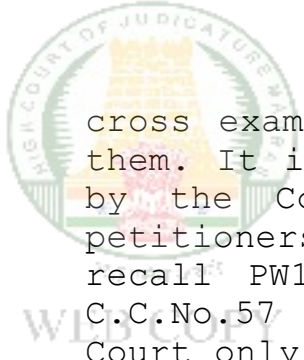
For Petitioners	: Mr.V.Perumal
For Respondent	: Mr.K.S.Durai Pandian
	Additional Public Prosecutor

ORDER

The Criminal Original Petition is filed to call for the records relating to the impugned order dated 07.08.2017 passed by the Judicial Magistrate Court, Devakottai in Cr.M.P.No.1560 of 2017 in C.C.No.57 of 2009 and set aside the same.

2.The petitioners are the accused in C.C.No.57 of 2009. On the basis of the complaint lodged by the de-facto complainant, a case was registered, as against the petitioners. After filing the charge sheet, the case was taken on file in C.C.No.57 of 2009 by the Judicial Magistrate Court, Devakottai, for the alleged offences punishable under Sections 147, 341, 294(b), 325, 34 and 506(ii) IPC.

<https://hcservices.courtservice.gov.in/hcservices> 3.As for the commencement of trial, it appears that PW1 was examined on 19.07.2010, thereafter, PW2 to PW10 were examined on different dates. It is to be noted that though PW2 to PW 10 were



cross examined by the petitioners, PW1 was not cross examined by them. It is further stated that the petitioners were not informed by the Counsel about the non-cross examination of PW1. The petitioners have filed a petition under Section 311 of Cr.P.C., to recall PW1 for cross examination in Cr.M.P.No.1560 of 2017 in C.C.No.57 of 2009. The said petition was dismissed by the Trial Court only on the ground that the delay was not fully explained by the petitioners for not filing the petition within a reasonable time.

4.The explanation offered by the petitioners that their previous Counsel did not inform them about the failure to cross examine PW1, appears to be probable. It is a basic principle that a fair opportunity should be given to the accused in defending the criminal case. PW-1 is the de-facto complainant and his evidence is very much relevant and denial of opportunity to the petitioners to cross examine PW1 will likely to cause serious prejudice to defend their case. In view of the matter, this Court is inclined to allow this petition subject to the terms.

5.The Criminal Original Petition is allowed and the order passed by the Judicial Magistrate Court, Devakottai in Cr.M.P.No.1560 of 2017 in C.C.No.57 of 2009 is set aside and the petition filed by the petitioners in Cr.M.P.No.1560 of 2017 in C.C.No.57 of 2009, stands allowed subject to the condition that the petitioners should deposit a sum of Rs.5,000/- (Rupees five thousand only) to the credit of Hon'ble Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai and on further condition that the petitioners should cross examine PW1 on the date when PW1 is available, without seeking any further adjournments on any other ground. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Inspector of Police,
Devakottai Taluk Police Station,
Tirunelveli District.
 - 2.The Judicial Magistrate Court,
Devakottai
 - 3.The Section Officer, Accounts Section,
Madurai Bench of Madras High Court, Madurai
- +One cc to Mr.V.Perumal, Advocate, SR.No.84741
cmr