



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:20.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

CRL.O.P.(MD)No.15774 of 2017

and

CRL.M.P.(MD)No.10479 of 2017

1.Mary

2.Rajakumari ... Petitioners/Petitioners/Accused No.1 & 2

-Vs-

State Represented by,
The Sub Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

(Crime No.443 of 2003) ... Respondent/Respondent/Complainant

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order dated 24.10.2017 passed in C.M.P.No.4315 of 2017 in C.C.No.46 of 2004 on the file of the learned Judicial Magistrate, Padmanabapuram, Kanyakumari District.

For Petitioners : Mr.A.Thiruvadikumar

For Respondent : Mr.K.S.Durai Pandian

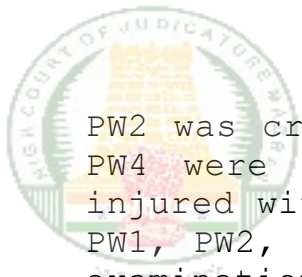
Additional Public Prosecutor

O R D E R

This Criminal Original Petition is filed for a direction to call for the records and to set aside the order dated 24.10.2017 passed in C.M.P.No.4315 of 2017 in C.C.No.46 of 2004 on the file of the learned Judicial Magistrate, Padmanabapuram, Kanyakumari District.

2.Heard Mr.A.Thiruvadikumar, learned Counsel appearing for the petitioner and Mr.K.S.Durai Pandian, learned Additional Public Prosecutor, who takes notice for the respondent.

3.The petitioners are the accused Nos.1 and 2 in the criminal case in C.C.No.46 of 2004, which is now pending before the learned Judicial Magistrate, Padmanabapuram, Kanyakumari District. As against the petitioners, a case was registered for the offences punishable under Sections 323 and 325 IPC. After the commencement of trial in the year 2009, PW1 was cross examined on 03.07.2009,



PW2 was cross examined on 08.02.2011. It is admitted that PW3 and PW4 were cross examined on 22.11.2011. PW3 is stated to be a injured witness and PW4 is the husband of PW3. It can be seen that PW1, PW2, PW5 and PW6 turn hostile and that the case is posted for examination of LW9 and LW10.

WEB COPY

4.It is at this stage, the petitioners have filed a petition under Section 311 Cr.P.C. to reopen the case for cross examining PW3 and PW4. It is stated by the petitioners that though proper reasons are stated in the petition, the said petition is dismissed on the ground that there is no explanation for the delay of six years. Admittedly, the witnesses PW3 and PW4 were cross examined on 22.02.2011, the application under Section 311 of Cr.P.C is filed only in the year 2017. It is in this factual matters, this Court is of the view that the long delay in filing the petition is not properly explained by the petitioners.

5.The learned Counsel for the petitioners submitted that fair opportunity should be given to the petitioners to prove their innocence and that in case the petitioners are deprived of an opportunity to cross examine PW3 and PW4, serious prejudice will be caused to the petitioners.

6.It is true that a fair opportunity should be given to the accused to defend himself from the criminal proceedings. Already, other witnesses except PW3 and PW4 turned hostile, and therefore the petitioners are more concerned about the cross examination of PW3 and PW4, who are the only witnesses, who have spoken against the petitioners. Considering the facts and circumstances, this Court is of the view that one more opportunity to the petitioners should be given to the petitioners in the interest of justice and this Court is therefore, inclined to allow this petition subject to terms.

7.As a result, the criminal original petition is allowed and the order of the learned Judicial Magistrate, Padmanabapuram, Kanyakumari District, dated 24.10.2017, in C.M.P.No.4315 of 2017 in C.C.No.46 of 2004, is set aside and the application filed in C.M.P.No.4315 of 2017 in C.C.No.46 of 2004 stands allowed, subject to condition that the petitioner shall pay a sum of Rs.10,000/- (Rupees ten thousand only) to PW3 within a period of two weeks from the date of receipt of a copy of this order. The petitioner shall also cross examine PW3 and PW4 on the date when they are available without seeking further adjournment. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)



To

1. The Judicial Magistrate,
Padmanabapuram,
Kanyakumari District.

2. The Sub Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

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

+ 1 cc TO Mr.A.Thiruvadikumar , Advocate in SR No. 88119

cmr

AE/SKN RSK/SAR1/08.12.2017/3P/5C

CRL.O.P. (MD) No.15774 of 2017
20.11.2017