



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2017

CORAM:

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

CRL.OP.(MD) No.16221 of 2017

and

CrI.M.P.(MD)No.10750 of 2017

1.Pitchaipandi

2.Ponnupandi

3.Samuthiram

: Petitioners / Petitioners/
Accused Nos.1 to 3

Vs.

State represented by
The Inspector of Police,
Krishnan Kovil Police Station,
Virudhunagar District.

: Respondent / Respondent /
Complainant

PRAYER: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order of the learned Judicial Magistrate No.II, Srivilliputhur, Virudhunagar District dated 06.10.2017 made in Cr.M.P.No.3529 of 2017 in S.T.C.No.405 of 2012 and to direct learned Judicial Magistrate No.II, Srivilliputhur to recall the witness PW1 to PW7 for cross examination.

For Petitioners

: Mr.B.Jeyakumar

For Respondent

: Mr.K.S.Durai Pandian

Additional Public Prosecutor

ORDER

The Criminal Original Petition is filed to set aside the order of the learned Judicial Magistrate No.II, Srivilliputhur, Virudhunagar District, dated 06.10.2017 made in Cr.M.P.No.3529 of 2017 in S.T.C.No.405 of 2012 and to direct learned Judicial Magistrate No.II, Srivilliputhur to recall the witness PW1 to PW7 for cross examination.

2.The petitioners are the accused in the criminal proceedings in S.T.C.No.405 of 2012. On the basis of the complaint lodged by the de-facto complainant, a case was registered originally in Crime No.7 of 2012 for the offences punishable under Sections 341, 323 and 506(i) IPC. After filing the charge sheet, the case was taken on file in S.T.C.No.405 of 2012 by the learned Judicial Magistrate No.II, Srivilliputhur, Virudhunagar District. It is admitted that the major offences in the criminal proceedings is only 506(i) IPC.



3. After the commencement of trial, it appears that PW1 and PW2 were examined on 25.06.2014 and thereafter, PW3 was examined on 23.09.2014 and PW4 and PW5 were examined on 06.01.2015 and PW7 was examined on 27.03.2017. Despite the fact that PW1 to PW3 were examined in the year 2014 itself, the present application is filed three years later. The lower Court dismissed the petition solely on the ground that the delay of more than three years was not fully explained by the petitioners (for not filing the petition within a reasonable time).

4. The learned Counsel for the petitioners stated that the petitioners have not cross examined PW1 to PW6, due to the fact that the petitioners' Counsel, who was engaged by them before the Lower Court was suffering from illness and that there was a communication gap and lack of co-ordination to take steps to cross examine the witnesses at an earlier point of time.

5. Having regard to the facts and circumstances and the settled position of law that an accused in the criminal case is entitled to a fair opportunity to cross examine the witness, this Court is inclined to allow this petition subject to the terms.

6. As a result, the Criminal Original Petition is allowed and the order dated 06.10.2017 made in Cr.M.P.No.3529 of 2017 in S.T.C.No.405 of 2012 on the file of learned Judicial Magistrate No.II, Srivilliputhur, Virudhunagar District is set aside. The petition in Cr.M.P.No.3529 of 2017 in S.T.C.No.405 of 2012, on the file of learned Judicial Magistrate No.II, Srivilliputhur, Virudhunagar District stands allowed subject to the condition that the petitioners shall deposit a sum of Rs.3,000/- (Rupees three thousand only) to the credit of Honourable Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai and on further condition that the petitioners should cross examine PW1 to PW7 on the date when they are available, without seeking any further adjournments on any other ground. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Srivilliputhur, Virudhunagar District.

<https://hcservice.court.gov.in/> The Judicial Magistrate,
Srivilliputhur at Virudhunagar District.



3. The Inspector of Police,
Krishnan Kovil Police Station,
Virudhunagar District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.B.Jeyakumar, Advocate Sr.No.89723

CMR

VB/SKN/RSK/SAR3/13/12/2017/3P/7C

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