



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.OP.(MD) No.16297 of 2017

1. Muthu @ Suthagar
2. Muthu @ Suresh
3. Ganesan
4. Shanthi

... Petitioners / Accused

Vs.

The State represented by
The Inspector of Police,
S.S.Colony Police Station,
Madurai District.
(in Cr.No.904/2012)

... Respondent

PRAYER: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order passed by the learned Sessions Judge, Mahalir Court, Madurai in Cr.M.P.No.1334/2017 in SC No.254 of 2013 dated 25.10.2017 against Crime No.904 of 2012 dated 12.08.2012 for the offences under sections 498(A) and 304(B) of IPC and Section 4 of Dowry Prohibition Act, seeking to recall the witnesses PW 1 to PW 10 under section 311 of Cr.P.C. for cross examination.

For Petitioners : Mr.J. Vijayaraja

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

ORDER

The criminal original petition is filed to set aside the order passed by the learned Sessions Judge, Mahalir Court, Madurai in Cr.M.P.No.1334/2017 in SC No.254 of 2013 dated 25.10.2017 (against Crime No.904 of 2012 dated 12.08.2012) for the offences under sections 498(A) and 304(B) of IPC and Section 4 of Dowry Prohibition

Act, and to recall the witnesses PW 1 to PW 10 under Section 311 of Cr.P.C. for cross examination.

2. Based on the complaint lodged against the petitioners, a case was registered for the offences punishable under Sections 498(A) and 304(B) of IPC and Section 4 of Dowry Prohibition Act in Crime No.904 of 2012.

3. During the trial, it is admitted that PW 1 to PW 4 were examined-in-chief on 11.08.2016, PW 5 and PW 6 were examined-in-chief on 23.09.2016, PW 7 was examined-in-chief on 01.12.2016, PW 8 was examined-in-chief on 22.12.2016, PW 9 was examined-in-chief on 11.01.2017 and P.W.10 was examined-in-chief on 17.03.2017.

4. After a considerable delay, a petition was filed by the petitioners to recall PW 1 to 10 for cross examining them. The petitioners have come forward with the petition under section 311 of Cr.P.C. to recall the witnesses only on 03.07.2017, simply stating that the mother of the petitioners' counsel was admitted in the hospital due to illness and subsequently died. The petitioners have not given any other explanation for this delay and hence the petition was dismissed. Aggrieved over the same, the present petition came to be filed. It is further submitted by the learned Counsel for the petitioners that the petitioners are entitled to have a fair opportunity to defend the criminal case.

5. The delay, though was admitted, is not alarming and cannot be held that the delay has caused much hardship to the other side. Having regard to the settled position of law, that a fair opportunity should be given to the accused to defend the criminal case, which is required in a case of this nature, where serious allegations are levelled against the petitioner, this Court is of the view that one more opportunity should be given to the petitioners to secure the ends of justice. Hence, this Court is inclined to allow this petition subject to terms.



6. Accordingly, the Criminal Original Petition is allowed and the order passed by the learned Sessions Judge, Mahalir Neethimandram, Madurai in CrI.M.P.No.1334/2017 in S.C.254 of 2013 on the filw of the Mahalir Neethimandram, Madurai, is set aside and the petition filed by the petitioners before the lower court in Cr.M.P.No.1334 of 2017 stands allowed subject to the condition that the petitioners shall deposit a sum of Rs.10,000/- (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 PW10 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 (Crl.Side)

/True Copy/

Sub Assistant Registrar

To

- 1.The Sessions Judge, Mahalir Neethimandram,
Madurai.
- 2.The Inspector of Police,
S.S.Colony Police Station, Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.J.VIJAYARAJA, Advocate SR.No.89814.

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