



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.03.2017
CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

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Crl.O.P.(MD) No.2418 of 2017
and
Crl.M.P.(MD)No.1901 of 2017

1.Panchavarnam
2.Ramadoss
3.Janakiammal

: Petitioners

-vs-

State Rep. by,
The Sub-Inspector of Police,
Narikudi Police Station,
Virudhunagar District.
(In Cr.No.223 of 2013).

: Respondent

Prayer: Petition is filed under Section 482 of Code of Criminal Procedure to call for the records and to set aside the order passed by the Judicial Magistrate Court, Aruppukkottai in Crl.M.P.No.2064 of 2016 in C.C. No.105 of 2014 on 21.4.2016 and allow this Criminal Original Petition.

For Petitioners :Mr.G.Marimuthu
For Respondent :Mr.A.P.Balasubramani,
Government Advocate (Crl.side)

O R D E R

The petitioners are facing prosecution in C.C.No.105 of 2014 for offences under Sections 294(b), 341, 323, 326 and 506(ii) of the Indian Penal Code before the learned Judicial Magistrate, Aruppukkottai. The prosecution examined twelve witnesses and the accused did not cross-examine P.W.1, P.W.2, P.W.3 and P.W.8 for reasons best known to themselves. Thereafter, the accused filed Crl.M.P.No.2064 of 2016 in C.C. No.105 of 2014 under Section 311 of the Code of Criminal Procedure to recall the witnesses P.W.1, P.W.2, P.W.3 and P.W.8 and the same was dismissed by the Trial Court on 21.04.2016, challenging which, the accused are before this Court.

2. Heard the learned counsel for the petitioners and the learned Government Advocate (Criminal side) appearing for the respondent.

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

3. The learned counsel for the accused submitted that if one



more opportunity is given to the accused to cross-examine the witnesses, they will cross-examine on the same day. He also contended that undue prejudice will be caused to the accused, if the witnesses are not cross-examined.

4. Per contra, the learned Government Advocate (Criminal side) refuted the allegations.

5. Today, when the matter was taken up for hearing, Mr. T. Augustin Paulraj, Special Sub-Inspector of Police, Narikudi Police Station, Virudhunagar District, is present.

6. This Court paid its anxious consideration to the rival submissions and perused the impugned order. It is seen that P.W.1 was an injured witness. P.W.1, P.W.2 and P.W.3 were examined in chief on 21.08.2014 and P.W.8 was examined in chief on 09.03.2016. On both days, the accused and the counsel were present, but, they did not choose to cross-examine the witnesses. In Vinod Kumar vs. State of Punjab reported in 2015 (1) Scale 542, the Hon'ble Supreme Court has very clearly stated that witnesses should be cross-examined on the day when they are examined in chief. Pursuant to the judgment of the Hon'ble Supreme Court, the Registrar General of the Madras High Court has issued a circular to all the Courts to follow the law laid down in the said judgment. Therefore, this Court does not find any serious infirmity in the order passed by the Trial Court. However, this Court is of the view that it will serve the interest of justice, if one more opportunity is given to the petitioners to cross-examine Balashanmugam-P.W.1 alone, on terms.

7. In the result, this Court directs the Learned Judicial Magistrate, Aruppukkottai to recall P.W.1 alone and on the day when P.W.1 appears, the accused shall pay the cost of Rs.1,000/- (Rupees One Thousand only) to P.W.1 and cross-examine him on the same day. If the accused fails to cross-examine P.W.1, for any reason including boycott of Court, they will forfeit their right to cross-examine P.W.1.

8. With the above direction, this petition is ordered accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assitant Registrar (CS II)

/True copy/

Sub Assistant Registrar



To:

1. The Judicial Magistrate,
Aruppukkottai.
2. The Sub-Inspector of Police,
Narikudi Police Station,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.G.MARIMUTHU, Advocate, in SR No.12900

SML/RM

AAM-RR/14.03.2017 3P 5c

Order made in
Crl.O.P. (MD) No.2418 of 2017
07.03.2017