



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. (MD)No.3618 of 2017

WEB COPY

1.Saravanan
2.Silambarasan

: Petitioners

-Vs-

The State,
Rep. by the Sub-Inspector of Police,
Thenkarai Police Station,
Theni District.
Cr.No.940 of 2010.

: Respondent

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to set aside the order passed by the learned Assistant Sessions Judge, Periyakulam, in Cr.M.P.No.69 of 2017 in S.C.No.57 of 2011, dated 13.03.2017.

For Petitioners

: Mr.N.Sathish Babu

For Respondent

: Mr.A.P.Balasubramani,
Government Advocate (Crl.side)

O R D E R

The petitioners are facing trial in S.C.No.57 of 2011 before the learned Assistant Sessions Judge, Periyakulam, for offences under Sections 294(b), 353, 225 and 307 of the Indian Penal Code. The prosecution examined their witnesses and the petitioners cross-examined them. The petitioners were examined under Section 313 of the Code of Criminal Procedure and after hearing the arguments of both sides, the case was posted for pronouncing judgment on 10.04.2017. At that juncture, the petitioners filed a petition in Cr.M.P.No.69 of 2017 in S.C.No.57 of 2011 under Section 311 of the Code of Criminal Procedure to recall P.Ws.1 to 6, P.Ws.12 and 13 for further cross-examination, which was dismissed by the Trial Court on 13.03.2017, challenging which, the petitioners are before this Court.

2. Heard Mr.N.Sathish Babu, learned counsel for the petitioners and Mr.A.P.Balasubramani, learned Government Advocate (Criminal side) appearing for the respondent.



3. Today, Mr.P.Murugan, Special Sub-Inspector of Police, Thenkarai Police Station, is present in Court.

4. Mr.N.Sathish Babu, learned counsel for the petitioners submitted that it is essential for the accused to further cross-examine the aforesaid witnesses in order to bring home certain facts and establish the innocence of the accused.

5. Mr.A.P.Balasubramani, learned Government Advocate (Criminal side) refuted the same.

6. This Court gave its anxious consideration to the rival submissions.

7. It is not a case where the accused has not cross-examined any of the witnesses. The records show that P.W.1 was examined in chief on 12.10.2011 and he was cross-examined by the accused after filing a petition under Section 311 of the Code of Criminal Procedure on 30.08.2013. Similarly, P.W.2 was examined in chief on 12.10.2011 and he was cross-examined only on 07.11.2016; P.W.3 was examined in chief on 16.04.2012 and he was cross-examined only on 07.11.2016; P.W.4 was examined in chief on 16.04.2012 and he was cross-examined only on 07.11.2016; P.W.5 was examined in chief on 16.04.2012 and he was cross-examined only on 30.01.2017; P.W.6 was examined in chief on 16.04.2012 and he was cross-examined only on 30.01.2017; P.W.12 was examined in chief on 14.03.2016 and on the same day, he has been cross-examined and P.W.13 was examined in chief on 15.03.2016 and he was cross-examined only on 19.10.2016. Therefore, it is clear that the accused had taken sufficient time for cross-examining the witnesses and that too, by recalling them under Section 311 of the Code of Criminal Procedure.

8. Recently, in **A.G. vs. Shiv Kumar Yadav** reported in **2015(9) Scale 649**, the Supreme Court has very clearly stated that the power under Section 311 of the Code of Criminal Procedure should not be invoked as a matter of routine and should be invoked, unless it is shown that there are sufficient grounds for exercise of the said power. Under such circumstances, this Court does not find any infirmity in the order passed by the Court below. This Criminal Original Petition is devoid of merits and accordingly, the same is dismissed.

Sd/-

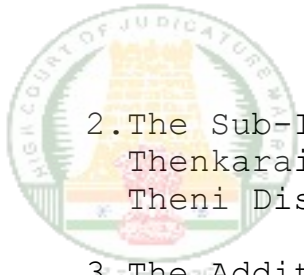
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1.The Assistant Sessions Judge,
Periyakulam.



2.The Sub-Inspector of Police,
Thenkarai Police Station,
Theni District.

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

SML

MKV/SKN-RSK/SAR3:04.04.2017:3P-4C

Order made in
Crl.O.P. (MD)No.3618 of 2017
Dated: 28.03.2017