



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2017

CORAM

THE HONOURABLE MR. JUSTICE P.N. PRAKASH**CRL.O.P. (MD) No. 7639 of 2017****and Crl.M.P.No.5221/2017**

WEB COPY

1.Thomas Zachkariya

2.Jasmine Thomas Zachkariya

: Petitioners/Accused Nos.1 & 3

Vs.

The Inspector of Police,
Kottar Police Station,
Kanyakumari District

: Respondent/Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records pertaining to the order passed by the Judicial Magistrate No.II, Nagercoil, in Cr.M.P.NO.2668 of 2017 dated 15.03.2017 and set aside the same.

For Petitioners

: Mr.Pandidurai

For Respondent

: Mr.K.Anbarasan

Government Advocate (Crl. side)

O R D E R

The petitioner is facing trial in C.C.No.442/2011 before the Judicial Magistrate, No.II, Nagercoil for offences under Sections 420, 465, 468, 471, 419 read with 120(B) IPC. During trial, P.W.1 was examined in chief on 19.04.2012 (in part) and his chief examination got over only on 18.04.2017. The trial Court had granted time to the accused to cross examine P.W.1 on two days, namely, 24.02.2017 and 02.05.2017. Unfortunately, in the meantime, on 01.04.2017, Al met with an accident along with his Advocate in connection with which, a case in Crime No.103/2017 has been registered by the Nanguneri P.S. on 01.04.2017 under Sections 279 and 337 IPC. Therefore, the petitioner was not able to give proper instructions to his counsel for cross examining P.W.1. On 02.05.2017, the trial Judge closed the evidence of P.W.1. The accused filed Crl.M.P.No.2668/2017 in C.C.No.442/2011 for recalling P.W.1 for cross examination, which has been dismissed by the trial Court on 30.05.2017, against which, the accused are before this Court.

2. Heard Mr.Pandithurai, learned counsel for the petitioners, who submitted that the accused do not want to adopt any dilatory tactics, but on account of an unforeseen event that had taken place on 01.04.2017, the accused were not able to cross examine the witnesses.

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

3. However, the learned Government Advocate (Crl. side)



refuted the allegations.

4. Under normal circumstances, this Court would not have allowed this application, because in **Vinod Kumar v. State of Punjab** reported in **(2015) 3 SCC 220**, the Supreme Court has given a direction that the prosecution witnesses should be cross examined on the same day of their examining in chief. This case relates to white collar offences. The evidence of P.W.1 started on 19.04.2012 and it ended only on 18.04.2017. In the meantime, on 01.04.2017, the accused and the Advocate were involved in a road accident and had suffered injuries. Immediately after recovery, without wasting time, the accused had filed a petition in CrI.M.P.No.2668/2017 under Section 311 Cr.P.C. on 19.05.2017. In the peculiar facts and circumstances of the case, this Court is of the view it will be in the interest of justice, if one more opportunity is given to the accused to cross examine P.W.1.

5. In the result, this petition is allowed and the order dated 30.05.2017 in Cr.M.P.No.2668/2017 is hereby set aside. However, the accused shall deposit Rs.2,000/- (Rupees two thousand only) as cost before the Judicial Magistrate, No.II, Nagercoil in C.C.No.442/2011 within two weeks from the date of receipt of a copy of this order. On such deposit, the learned Judicial Magistrate, shall recall P.W.1 on a day convenient to the trial Court. On the appearance of P.W.1, he shall be furnished with his deposition for refreshing his memory before cross examination by the accused. The trial Court shall disburse the cost of Rs.2,000/- to P.W.1, when he appears for cross examination. If the accused fails to cross examine P.W.1 on the day, he appears, even on account of boycott of Courts, they will forfeit their right to cross examine P.W.1. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate, No.II
Nagercoil

2.The Inspector of Police,
Kottar Police Station,
Kanyakumari District

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
+1cc to Mr.T.LAJAPATHI ROY Advocate in SR. No.61603

RR

JS/SKN.RSK/SAR.2/5.7.2017/2P-5C

Order made in

CRL.O.P. (MD)No.7639 of 2017
and CrI.M.P.No.5221/2017
21.06.2017