



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2017

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

Crl.O.P. (MD) No.22425 of 2016

1. Francklin Cesar
2. Geisar
3. Pavul Sugirtharaj
4. Ashirvadham
5. Yesudass

... Petitioners/A1, A3toA6

-vs-

The State through
Inspector of Police,
Lalgudi Police Station,
Lalgudi, Trichy District.

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for records pertaining to C.M.P.No.2892/2016 in C.C.No.84/2011 on the file of the Honourable Judicial Magistrate, Lalgudi and set aside the order passed in C.M.P.No.2892/2016 in C.C.No.84/2011 dated 4th October, 2016 and allow the same.

For Petitioners : Mr.RM.Sivakumar

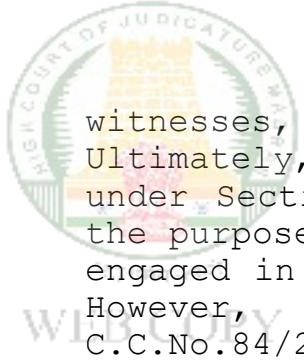
For Respondent : Mr.K.Anbarasan
Govt. Advocate (Crl.Side)

O R D E R

This petition has been filed to call for records pertaining to C.M.P.No.2892 of 2016 in C.C.No.84 of 2011 on the file of the learned Judicial Magistrate, Lalgudi and set aside the order passed in C.M.P.No.2892 of 2016 in C.C.No.84 of 2011 dated 04.10.2016 and allow the same.

2. The petitioners are facing trial in C.C.No.84 of 2011 before the learned Judicial Magistrate, Lalgudi for offences under Sections 464, 471, 420, 120(b), 109 and 506(i) IPC. These petitioners filed a quash petition in Crl.O.P.(MD) No.17052 of 2012 in which this Court has directed the Trial Court to expeditiously complete the trial.

<https://hcservices.ecourts.gov.in/hcservices/> 3. While so, the prosecution commenced the trial with the chief examination of P.W.1 on 21.06.2016 and the accused did not choose to cross examine P.W.1. The prosecution examined further



witnesses, who have not been cross examined by the accused. Ultimately, the accused filed C.M.P.No.2892/2016 in C.C.No.84/2011 under Section 311 Cr.P.C. for recalling P.Ws.1, 2, 3, 5 and 7 for the purpose of cross examination, on the ground that his counsel was engaged in another Court at the time of their examination in chief. However, the Trial Court dismissed C.M.P.No.2892/2016 in C.C.No.84/2011. Challenging the same, the accused are before this Court.

4. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side). Mr.Selvaraj, Sub-Inspector of Police, Lalgudi Police Station, Trichy District is also present in this Court.

5. It is seen that the accused were given sufficient opportunity by the Trial Court to cross examine the prosecution witnesses, despite which, they did not cross examine them. In fact, during trial, four prosecution witnesses have died. The reason given by the accused that their counsel was engaged in another Court cannot be accepted in the light of the provisions of Section 309 Cr.P.C., wherein it is stated that the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment. That apart, the Trial Court had also relied upon the judgment of the Hon'ble Supreme Court in the case of **Vinod Kumar vs. State of Punjab** reported in **2015 (1) Scale 542** and had dismissed the petition.

6. This Court does not find any infirmity in the order passed by the Trial Court, warranting inference. However, this Court is of the view that the accused may be given one more opportunity to cross examine P.Ws.1 & 2 alone on terms.

7. In the result, this Court directs the Trial Court to recall P.Ws.1 & 2 on the convenient date of the Trial Court and on their appearance, the accused / petitioners shall pay a sum of Rs.1,000/- each as costs to the witnesses and cross examine them on the same day. Before witnesses are put into the witness box, they must be permitted to refresh their memory by making them read the chief examination and only thereafter, they can be cross examined. Boycott of Courts shall not be a reason for not cross examining the witnesses, when they appear. On the appearance of the witnesses, if the accused fail to cross examine them, they will forfeit their rights to cross examine.

8. With the above observation and direction, this Criminal Original Petition is ordered accordingly. Consequently, connected



miscellaneous petition is closed.

Sd/-
Assistant Registrar (ADII)

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Sub Assistant Registrar

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To:

1. The Judicial Magistrate,
Lalgudi.
2. Do Through The Chief Judicial Magistrate,
Trichy.
3. The Inspector of Police,
Lalgudi Police Station,
Lalgudi, Trichy District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.RM.Sivakumar, Advocate Sr.No. 13274

JAM/15.03.17 /CM-MSA/3P-6C

Cr1.O.P. (MD) No.22425 of 2016
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