

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.15874 of 2018

and

Crl.MP.No.8138 of 2018

1.M.Kumar
2.Rajeswari
3.Sivalingam
4.Manickkam
5.Janaki
6.Kamaraj
7.Kanaga
8.Sivaraj
9.Lakshmi
10.Dharman
11.Mani

... Petitioners

Vs

Bhakkiyam

... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to please set aside the order made in Crl.MP.No.1617 of 2018 dated 28.04.2018 in C.C.No.222 of 2017 on the file of the Judicial Magistrate Court No.1 Dharmapuri by allowing this Criminal Original Petition.

For Petitioners : Mr.K.Gandhi Kumar

सत्यमेव जयते
O R D E R

This Criminal Original Petition has been filed to set aside the order dated 28.04.2018 passed by the learned Judicial Magistrate No.I, Dharmapuri in Crl.MP.No.1617 of 2018 in C.C.No.222 of 2017.

2. Heard the learned counsel for the petitioners and perused the materials placed on record.

3. These petitioners are facing the prosecution in C.C.No.222 of 2017 before the Judicial Magistrate No.I, Dharmapuri on a private complaint lodged by the respondent for the offences under Sections 498-A, 494 and 109 IPC. It is seen

that this case is of the year 2002 filed before the Judicial Magistrate, Krishnagiri and was taken on file in CC.No.70 of 2002. PW1 was examined on 13.09.2006 and she was also extensively cross examined by the accused. The matter came to this Court in Criminal Appeal No.799 of 2010 and the case has now been remanded to the Judicial Magistrate Court No.I, Dharmapuri, after bifurcation of Krishnagiri District and the case has been renumbered as CC.No.222 of 2017. While so, the accused filed CrI.MP.No.1617 of 2018 in CC.No.222 of 2017 under Section 311 Cr.P.C to recall PW1 for further cross examination. In the petition filed by the accused, no reasons have been given as to why PW1 should be recalled for cross examination. Hence, the trial Court has dismissed the petition on 28.04.2018. Challenging which, the accused are before this Court.

4. Mr.K.Gandhi Kumar learned counsel for the accused submitted that same documents that are available with the accused namely, a panchayat Muchalika has to be confronted to PW1.

5. However, in the petition filed under Section 311 Cr.P.C., strong reasons should have been stated as held by the Supreme Court in Rajaram Prasad Yadav Vs State of Bihar reported in (2013) 3 Scale 316 . Similarly, in A.G. Vs Shiv Kumar Yadav reported in 2015[9] Scale 649, the Supreme Court has issued clear directions that a petition under Section 311 Cr.P.C. cannot be maintained, on the mere asking of a party as that would put serious prejudice to the witness. In this case, the accused have cross-examined PW1 as early as on 13.09.2006 and the accused has not made out a strong case for recalling PW1. The documents in the possession of the accused can be established through other means by examining defence witness, if so desired. Under such circumstances, this Court does not find any merits in this petition and is dismissed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gmd/gya

To

1.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Gandhi Kumar ,Advocate sr.no.38554

Cr1.O.P.No.15874 of 2018

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nr 05/07/2018



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