

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 31.10.2018
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.25392 of 2018
and CRL.M.P.No.14449 of 2018

1.Sham
2.Ajith
3.Annesh

.. Petitioners(1 to 3)

Vs

State Rep. by its
The Inspector of Police,
PEW Police Station,
Coimbatore.
(Crime No.7 of 2011)
Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in C.M.P.No.5742 of 2018 in C.C.No.170 of 2012 dated 05.09.2018 on the file of the learned Judicial Magistrate No.3 Coimbatore and to set aside the same order.

For Petitioners : Mr.G.Anbuchezeian
For Respondent : Mrs.M.Prabavathi, APP

O R D E R

The petitioners are accused in C.C.No.170 of 2012, before the Judicial Magistrate No.III, Coimbatore, for the offences under Section 4(1)a and 4(1)AAA of Tamil Nadu Prohibition Act r/w Section 468 and 471 of IPC and Section 251(B) r/w Section 3 of Arms Act. The prosecution examined PW1 to PW3 in the year 2016 and the accused did not choose to cross-examine the witnesses. The accused filed Crl.M.P.No.5742 of 2018 in C.C.No.170 of 2012 to recall PW1 to PW3, which has been dismissed by the Trial Court, by order dated 05.09.2018, challenging which, the accused are before this Court.

2.Heard the learned counsel appearing for the accused and the learned Additional Public Prosecutor.

3.This Court perused the records. It is seen that PW1 to PW3 were examined in the year 2016 and from 2016 to 2018, no steps were taken to recall the said witnesses. The present petition in Crl.M.P.No.5742 of 2018 was filed

only on 05.09.2018 and in that petition also, the accused have merely stated that because of the illness of his counsel, the witnesses were not cross-examined in the year 2016. Assuming for a moment, that the counsel was ill on the day when the witnesses were examined in-chief in the year 2016, the accused could have filed a petition under Section 311 Cr.P.C, immediately thereafter or at least within a year, whereas, the petition has been filed only in the year 2018. In Vinodh Kumar Vs State of Punjab [2015(1) MLJ (Crl) 288], the Supreme Court has clearly stated that the witnesses should be cross-examined on the day he has examined in-chief. In A.G. Vs Shiv Kumar Yadav [2015(9) Scale 649], the Supreme Court has stated that the power under Section 311 Cr.P.C. cannot be invoked in a cavalier manner. Under such circumstances, this Court does not find any infirmity in the order passed by the Court below warranting interference.

Hence, this petition is devoid of merits and is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

dua/gya

To

1.Judicial Magistrate No.III,
Coimbatore.

2.do thro the Chief Judicial Magistrate
Coimbatore.

3.The Inspector of Police,
PEW Police Station,
Coimbatore.
(Crime No.7 of 2011)

4.The Public Prosecutor,
High Court, Madras.

CRL.OP.No.25392 of 2018

ASK(27/11/2018)