

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.28608 of 2018
and
Crl.M.P.16661 of 2018

1.Sivalingam
2.Rajam
3.Unnamalai
4.Kannammal
5.Kalaivani

...Petitioners

.vs.

State rep. by
The Inspector of Police,
Nagarasampatty Police Station,
Krishnagiri District.
(Crime.No.12/2013)

...Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, praying to set aside the order passed by the learned Munsif cum Judicial Magistrate, Pochampalli, Krishnagiri District dated 06.09.2018 in Crl.M.P.No.3416 of 2018 in C.C.No.58/2013.

For Petitioner : Mr.E.Kannadasan

For Respondents: Mr.C.Raghavan
Government Advocate (Crl.Side)

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner seeking for extension of time to comply with the conditional order passed by the Court while allowing the petition filed under Section 311 Cr.P.C.

2.The petitioners are facing trial before the Court below for an offence under Sections 147, 148, 294(b), 323, 324, 506 (ii) of I.P.C.

3.The prosecution had examined 10 witnesses and none of those witnesses were cross-examined by the petitioners. Therefore, the petitioners filed a petition under Section 311 of Cr.P.C. to recall PW.1 to PW.10 for cross-examination. The Court below, by order dated 23.08.2018, allowed the petition on condition that the petitioners deposit a batta of Rs.200/- to each of the witnesses to a total of Rs.2000/- on or before 05.09.2018. Since this condition was not complied with, the petition itself was dismissed on 06.09.2018. Aggrieved by the same, the present petition has been filed before this Court.

4.The learned counsel for the petitioners would submit that the petitioners are poor agriculturists and they were not in a position to comply with the condition imposed by the Court below within the time stipulated by the Court below. The learned counsel for the petitioners would further submit that one more opportunity must be given to the petitioners to comply with the condition and to recall and cross-examination of PW.1 and PW.10.

5.Taking into consideration the facts and circumstances of the case, this Court is of the considered view that one last opportunity could be given to the petitioners for recall and cross-examination of PW.1 and PW.10. However, this Court wants to increase the cost payable to each of the witnesses.

6.The order of the Court below, dated 06.09.2018, made in CrI.M.P.No.3416 of 2018 in C.C.No.58 of 2013, is hereby set aside. The Court below is directed to issue summons to PW.1 to PW.10 and fix a date for their appearance for cross-examination by the petitioners. The petitioners shall cross-examine the witnesses on the same day when they make their appearance before the Court below. The Court below shall give a copy of the deposition to each of the witnesses in order to enable the witnesses to refresh their memory and to decollect the evidence given by them during the examination in chief. This is due to the fact that these witnesses were examined between 2013-2017. The Court below shall not expose the witnesses to cross examination without adopting this procedure. If for any reason, the petitioners do not cross-examine the witnesses on the date when they appear, the petitioners shall forfeit their right to recall the witnesses in future. When the witnesses appear before the Court below for giving evidence, each of the witnesses shall be paid a sum of Rs.400/- by the petitioners.

7.In the result, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings

within three months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

stm

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

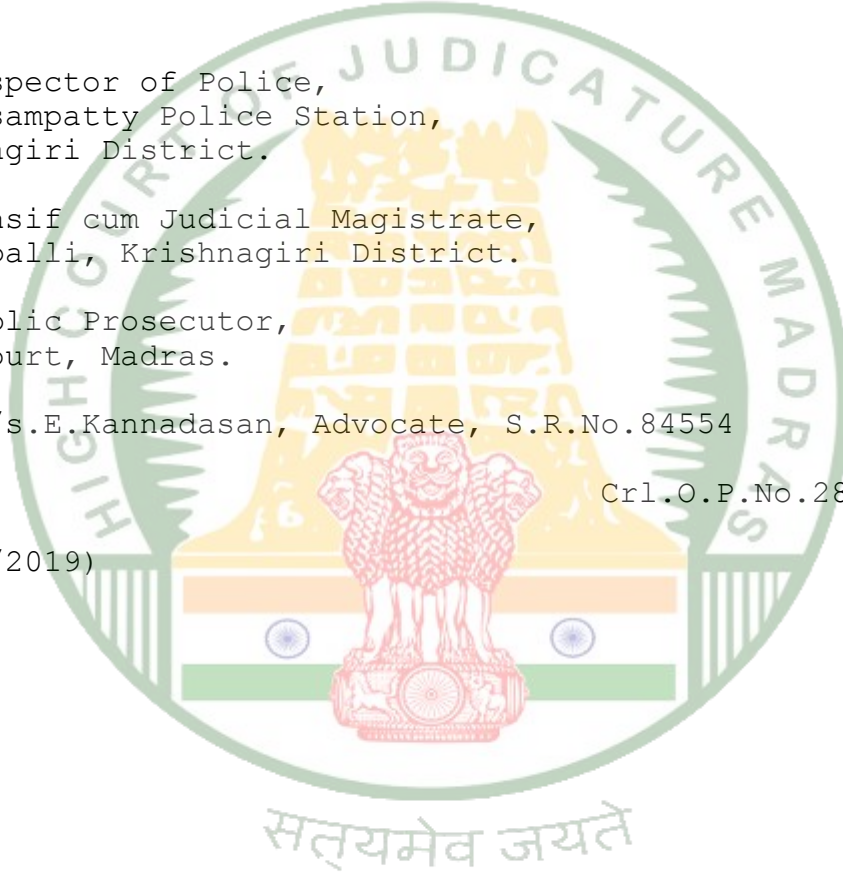
To

1. The Inspector of Police,
Nagarasampatty Police Station,
Krishnagiri District.
2. The Munsif cum Judicial Magistrate,
Pochampalli, Krishnagiri District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.E.Kannadasan, Advocate, S.R.No.84554

Crl.O.P.No.28608 of 2018

CP (CO)
KAK (04/01/2019)



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