



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **12.09.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**
Crl.O.P. [MD] .No.1164 of 2018
and
Cr.M.P. (MD)No.487 of 2018

1.Yesurajan
2.Stella Bai

: Petitioners/ Accused No.1 & 2

Vs.

State represented by
The Inspector of Police,
A.W.P.S. Kuzhithurai,
Kanyakumari District.
In Crime No.11 of 2015. : Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to set aside the order made in C.M.P.No.4653 of 2017 in C.C.No.152 of 2015 on the file of Judicial Magistrate Padmanabhapuram, dated 27.10.2017 and allow the petition seeking recall the witness namely PW-1 and PW-2.

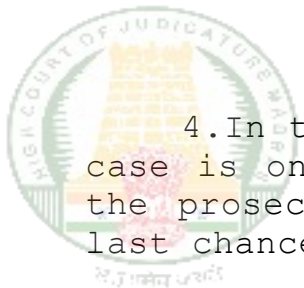
For Petitioners : Mr.T.Selvakumaran
For Respondent : Mr.M.Chandra Sekaran
Additional Public Prosecutor

ORDER

This petition has been filed challenging the order of the Court below dismissing the application filed under Section 311 of Cr.P.C., to recall P.W.1 and P.W.2 and to cross examine them.

2.The petitioners are the husband and the mother-in-law of the defacto complainant. P.W.1 and P.W.2 were examined in the year 2017 and documents were also marked through them. However, the counsel for the petitioners did not cross examine P.W.1 and P.W.2 on the day they were cross examined in chief. Subsequently, three other witnesses have been examined and the case is at the stage of examining the witnesses on the side of the prosecution.

3.The petitioners filed an application to recall P.W.1 and P.W.2 in order to cross-examine them. The Court below dismissed the petition on the ground that on an earlier occasion, a similar petition was allowed and the petitioner did not take steps to pay the process batta and on the day, when P.W.1 and P.W.2 are present, the petitioners were not able to cross examine them due to Advocates boycott. The Court below found that the boycott of the Advocates cannot be a ground to justify the failure of the petitioners to cross examine P.W.1 and P.W.2.



4. In this case, P.W.1 and P.W.2 are the main witnesses and the case is only in the stage of examination of further witnesses by the prosecution. Therefore, this Court deems it fit to give one last chance to the petitioner to cross examine P.W.1 and P.W.2.

5. Accordingly, the order passed by the Court below in Crl.M.P.No.4653 of 2017, dated 27.10.2017 is hereby set aside. The Court below shall fix a date for appearance of P.W.1 and P.W.2. before putting them in the witness box, there shall be furnished with the deposition, so that they can refresh their memory and only thereafter they can be subjected to cross examination. On the day, when the witnesses appear, if the petitioners failed to cross examine them, even on account of boycott of Court, the petitioners forfeit their right to recall them again. The petitioner shall pay a cost of Rs.1,000/- to each of the witness.

6. It is also made clear that the petitioners will have to cross examine all the other witnesses on the very same day, when they are examined in Chief, failing which, the petitioners will forfeit their right to recall them again.

7. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Judicial Magistrate,
Padmanabhapuram,

2. The Inspector of Police,
A.W.P.S. Kuzhithurai,
Kanyakumari District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.T.Selvakumaran, Advocate Sr.No.84191

LS

VB/RP/SAR1/17.09.2018/2P/5C