



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2018

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P.(MD)No.1705 of 2018

1.S.Manivannan
2.T.Sudalai Muthu Pillai
3.T.C.Thanammal

... Petitioners

-vs-

The Inspector of Police,
All Women Police Station,
Nagercoil,
Kanyakumari District.

... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the impugned order dated 11.12.2017 passed by the learned Judicial Magistrate No.II, Nagercoil and set aside the same and consequently allow the application filed by the petitioners herein in Cr.M.P.No.5334 of 2017 in C.C.No.151 of 2013, on the file of the learned Judicial Magistrate No.II, Nagercoil, under Section 311 of Cr.P.C., for seeking permission to recall P.W.1 for cross-examination.

For Petitioners : Mr.E.V.N.Siva
For Respondent : Mr.Prabu Ramachandran
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed by the petitioners, to set aside the order passed by the learned Judicial Magistrate No.II, Nagercoil in Cr.M.P.No.5334 of 2017 in C.C.No.151 of 2013.

2.The learned counsel appearing for the petitioners has submitted that the petitioners are the accused Nos.1 to 3 and they are facing trial for the charges under Sections 498A, 406 and Section 4 of the Tamilnadu Prohibition of Harassment of Women Act. He further submitted that the petitioners have been regularly appeared before the Trial Court and the charge has been framed on 19.09.2013 and thereafter, till 08.06.2017, no progress has been made and only on 08.06.2017, the P.W.1 was examined and on that date the petitioners' counsel, was out of station and hence, the P.W.1 was not cross examined. He further submitted that on 25.09.2017, the petitioners have filed a petition under Section 311 Cr.P.C., in Cr.M.P.No.5334 of 2017 to recall P.W.1 for cross examination and the same has been dismissed by the learned Judicial Magistrate, without



considering the petitioners' request. He further submitted that even after the dismissal of the said petition, no progress has been made in C.C.No.151 of 2013, till today and hence he requests to give one more opportunity to the petitioners to cross examine the P.W.1.

3.The learned Government Advocate (Crl.Side) has submitted that the learned Judicial Magistrate has passed the order by taking into consideration, the reason given by the petitioners that their Advocate was out of station is not a valid ground. He further submitted that when an opportunity was given to the petitioners, they have not utilized the opportunity and cross examined the P.W.1 and they have filed the petition to recall the P.W.1, with a view to drag on the proceedings and hence he strongly opposed, this petition.

4.A perusal of the Diary Extract in C.C.No.151 of 2013 shows that the charge was framed on 19.09.2013 and thereafter no progress has been made till 08.06.2017 and only on 08.06.2017, the P.W.1 was examined in Chief and thereafter it was adjourned to 13.07.2017, 17.08.2017 and 25.09.2017 and on that date, the petitioners herein have filed a petition under Section 311 Cr.P.C., to recall the P.W.1 for cross examination and the same was taken on file in Cr.M.P.No.5334 of 2017 and the same has been adjourned to 27.11.2017 and finally on 30.11.2017. The learned Judicial Magistrate has dismissed the application stating that the reason given by the petitioners is not acceptable. Taking into consideration the petitioners have been appearing before the Trial Court from the year 2013 and no progress has been made till 08.06.2017, I am of the view that one more opportunity should be given to the petitioners to cross examine the P.W.1. However, the petitioners should compensate the P.W.1 for the inconvenience caused to her.

5.In the result, this Criminal Original Petition will be allowed on deposit of cost of Rs.1,000/-before the Trial Court on or before 19.02.2018, failing which, this petition shall stand dismissed. If the petitioners complained with the aforesaid condition on or before 19.02.2018, the learned Judicial Magistrate has to recall the P.W.1 and give an opportunity to the petitioners to cross examine the P.W.1 and after such cross examination, the learned Judicial Magistrate has to pay the aforesaid cost of Rs.1,000/- to the P.W.1. The petitioners are directed to cross examine the P.W.1 on her appearance before the Trial Court, without seeking any more adjournment.

6.With the aforesaid directions, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar(C.O.)

/True Copy/



To

1 The Judicial Magistrate NO.II,
Nagercoil.

2 The Inspector of Police,
All Women Police Station,
Nagercoil,
Kanyakumari District.

+1CC to Mr.E.V.N.Siva, Advocate, SR.No. 46349

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SSS

AM/SV MMS/SAR 1/15.02.2018/3P/4C