



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:17.01.2018
CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

WEB COPY

CRL.O.P. (MD)No.657 of 2018
and
Crl.M.P. (MD) .No.281 of 2018

1.Dinakaran
2.Eswaran
3.Ramachandran (died)
4.Karthick
5.Petchiyammal
6.Balammal
7.Chandra

... Petitioners/Accused 1 to 7

-Vs-

State through
The Inspector of Police,
Gudalur South Police Station,
Theni District.
In Cr.No.87/2010

... Respondent / Complainant

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed in Cr.M.P.No.7039 of 2017 dated 23.11.2017 in C.C.No.627 of 2010 on the file of the learned Judicial Magistrate Court, Uthamapalayam, Theni District and direct the learned Judicial Magistrate Court, Uthamapalayam to recall the P.W.1 to 8 for cross examination in C.C.No.627 of 2010 on the file of the learned Judicial Magistrate Court, Uthamapalayam.

For Petitioners : Mr.S.Karthick
For Respondent : Mr.Prabhu Ramachandran
Government Advocate (Crl. Side)

O R D E R

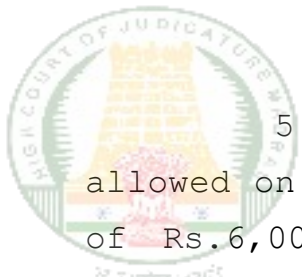
This Criminal Original petition has been filed by accused Nos.1 to 7 to set aside the order passed by the learned Judicial Magistrate Court, Uthamapalayam in Cr.M.P.No.7039 of 2017 in C.C.No.627 of 2010, dated 23.11.2017.



2. The learned counsel appearing for the petitioners has submitted that the petitioners are facing trial in C.C.No.627 of 2010 under Sections 147, 148, 447, 341, 294(b) and 506(ii) I.P.C. He further submitted that P.Ws.1 to 5 and 8 were not cross examined, when they were examined in chief, as their counsel was not available on that day. He further submitted that now the case is posted for evidence on the side of the accused and at that stage only, the petitioners realized that cross examination of the aforesaid witnesses is must and hence, they have filed a petition under Section 311 Cr.P.C in Cr.M.P.No.7039 of 2017 on 07.10.2017 to recall the aforesaid witnesses for the purpose of cross-examination. He further submitted that the learned Judicial Magistrate, without considering the request made by the petitioners, has dismissed the petition, without giving opportunity to the petitioners to cross examine the aforesaid material witnesses.

3. The learned Government Advocate (Crl.side) has opposed this petition on the ground that even though P.Ws.1 to 5 were examined on 28.09.2012 and P.W.8 was examined on 13.03.2013, the petitioners have not taken any steps to recall the aforesaid witnesses within the reasonable time and with a view to drag on the proceedings, they have filed a petition to recall the aforesaid witnesses belatedly, after five years.

4.A perusal of the order passed by the learned Judicial Magistrate shows that P.Ws.1 to 5 were examined in chief on 28.09.2012 and P.W.8 was examined in chief on 13.03.2013. After 5 years, the petitioners have filed the petition to recall the aforesaid witnesses. The reason stated by the learned counsel for the petitioners is that since their counsel was not available on the particular dates, the aforesaid witnesses were not cross examined on the very same date. Even if the said contention is accepted for argument sake, the petitioners have not stated any reason for not filing petition to recall the aforesaid witnesses within the reasonable time. However, in order to give an opportunity to the petitioners to cross examine the aforesaid witnesses, I am inclined to allow the present petition by imposing condition.



5. In the result, this Criminal Original Petition will be allowed on a condition that the petitioners shall jointly pay a sum of Rs.6,000/- (Rupees six thousand only) to the credit of the Honourable Chief Justice Relief Fund on or before 02.02.2018 and the order passed in Cr.M.P.No.7039 of 2017 dated 23.11.2017 in C.C.No.627 of 2010 by the learned Judicial Magistrate Court, Uthamapalayam, Theni District will be set aside and the petition in Crl.M.P.No.7039 of 2017 in C.C.No.627 of 2010 on the file of the learned Judicial Magistrate Court, Uthamapalayam, Theni District shall stand allowed. In case, the petitioners failed to comply with the aforesaid condition, this Criminal Original Petition shall stand dismissed automatically without further reference to the Court. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Uthamapalayam, Theni District.
2. The Inspector of Police,
Gudalur South Police Station, Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.S.KARTHIK, Advocate SR.No.42498.

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