

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 16.02.2018****CORAM:****THE HONOURABLE MR. JUSTICE P.N. PRAKASH****Cr1.R.C. (MD) No.90 of 2018**

1. Antony Xavier
2. Antolenin
3. Sunil
4. Christopher
5. Kumar Justus
6. Joseph Raj ... Petitioners/Petitioners / Accused 1 to 6

vs.

State rep by
The Sub-Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
(Crime No.403 of 2014) ... Respondents / Respondents/ Complainants

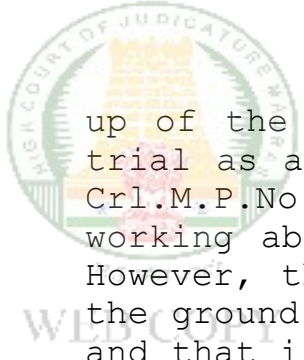
PRAYER: Criminal revision filed, under Section 397 r/w 401 Cr.P.C., to call for the records relating to the order passed by the Judicial Magistrate, Padmanabhapuram, Kanyakumari District in Cr1.M.P.No.417 of 2018 in C.C.No.137 of 2017 dated 01.02.2018 and set aside the same.

For Petitioners : Mr.C.T.Perumal
For Respondent : Mr.S.Bharathi
Government Advocate (Criminal side)

ORDER

After completing the investigation in Crime No.403 of 2014, the respondent police have filed final report in C.C.No.137 of 2017 before the Judicial Magistrate, Padmanabhapuram, against 8 accused for the offences under Sections 147, 148, 294(b), 427 and 506(ii) I.P.C. and Section 4 of Tamil Nadu Prevention of Women Harassment Act, 2002. The petitioners are A1 to A6 in C.C.No.137 of 2017.

2.It is the case of the petitioners that Seldev (A7) and Jen Paul (A8) are not appearing before the trial Court and the NBW issued against them is not being executed by the police and therefore, there is no progress in the trial. Hence, the petitioners filed Cr1.M.P.No.417 of 2018 in C.C.No.137 of 2017 under Rule 17 (1) of the Criminal Rules of Practice for splitting



up of the case as against A7 and A8 and for proceeding with the trial as against A1 to A6. The police have filed their counter in CrI.M.P.No.417 of 2018, wherein it is stated that A7 and A8 are working abroad and steps are being taken to bring them to India. However, the trial Court dismissed the petition on 01.02.2018, on the ground that surety action has been initiated against A7 and A8 and that if the case is split up against them, witnesses will have to be examined twice.

3.The fact remains that A7 and A8 are abroad. But trial against A1 to A6 cannot be kept pending indefinitely till A7 and A8 are secured by the Police. As regards the apprehension of the trial Court that the witnesses will have to be summoned twice, the trial Court can follow the procedure contemplated under Section 299 Cr.P.C. by recording the evidence of prosecution witnesses in both the cases simultaneously. The deposition with regard to the split up case against A7 and A8 should be signed by the witnesses and they shall be kept as part of the split up case records. The cross-examination of the witnesses in the main case in C.C.No.137 of 2017 as against A1 to A6 can proceed. As and when A7 and A8 are secured, the trial can be proceeded against them based on the deposition of the witnesses that have been already recorded. The witnesses can be recalled only if the conditions enumerated in Section 299(i) is satisfied. For splitting up of the case and proceed under Section 299 Cr.P.C., issuance of proclamation is not a precondition. Therefore, this Court directs the trial Court to wait for a period of six months from the date of receipt of a copy of this order and if the police are not able to produce A7 and A8, the case shall be split up as against them and shall proceed as against A7 and A8 in the manner stated above.

4.With the above direction, this Criminal Revision Case is disposed of.

Sd/-
Assistant Registrar(P&A)

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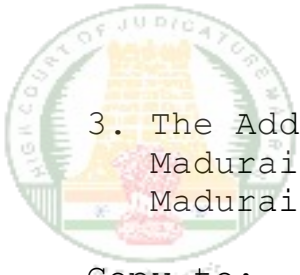
Sub Assistant Registrar

To:

1.The Judicial Magistrate,
Padmanabhapuram.

2.The Sub-Inspector of Police,
Thuckalay Police Station,

<https://hcservices.mca.gov.in/hcservices/> District.



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

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.C.T.Perumal , Advocate in SR No. 49109

sj

AE/KK/SAR4/28.02.2018/3P/7C

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16.02.2018