



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2018

CORAM

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THE HONOURABLE MR.JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P.(MD)No.1293 of 2017

and

Crl.M.P (MD) No.1073 of 2017

1. Subramanian
2. Kannan
3. Panchavararam
4. Indra

... Petitioners/Accused 1 to 4

Vs.

The State Rep by
The Inspector of Police
Avaniapuram Police Station
Madurai
Crime No.335 of 2009

... Respondent/Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 26.12.2016 made in Cr.M.P.No.1691 of 2016 in Sessions Case No.369 of 2010 on the file of the learned Sessions Court, Mahalir Neethimandram, Madurai.

For Petitioners	: Mr.M.Lingadurai
For Respondent	: Mr.A.Robinson
	Government Advocate (Crl. Side)

O R D E R

This Criminal Original Petition has been filed seeking to set aside the order passed by the learned Sessions Judge, Mahalir Neethimandram, Madurai, dated 26.12.2016, in Cr.M.P.No.1691 of 2016 in S.C.No. 369 of 2010, dismissing the petition filed by the petitioner to recall and cross examine P.W.1 to P.W.4.

2. The learned counsel for the petitioners would submit that the petitioners are facing trial for offence under Section 304 (B) of IPC. He would submit that P.W.1 to P.W 4 were examined in chief on 24.11.2014 and since the petitioners were not having relevant documents required for cross examination and due to the handicap they were unable to cross examine the witnesses and the learned trial judge had recorded as 'No Cross'. He would also submit that excepting four witnesses, the petitioners have cross examined all the witnesses sofar examined by the prosecution without any delay.



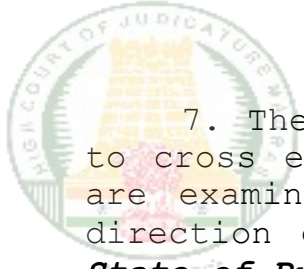
The petitioners have filed a petition to recall P.W.1 to P.W.4, but the trial Court has dismissed the same despite the prosecution not objecting for recall. He would submit that the learned Sessions Judge relying on the decision of the Apex Court in **Vinod Kumar vs. State of Punjab [2015(1) MLJ (crl) 288]** has dismissed the petition to recall the witnesses. He would also submit that though there is a delay in cross examining P.Ws.1 to 4, the evidence of the above witnesses are essential for the just decision of the case and if they are not allowed to cross examine it will be a case of no defence and the petitioners would have to undergo the ordeal of second round of litigation at a later point of time.

3. The learned Government Advocate would concede that the prosecutor before the trial court had not objected for recalling the witness.

4. Heard both sides. Gone through the records. This Court is of the opinion that there is no error or illegality in the order passed by the learned Sessions Judge, Mahalir Neethimandram, Madurai, as it has been passed following the dictum laid down by the Hon'ble Supreme Court in **Vinod Kumar vs. State of Punjab [2015(1) MLJ (crl) 288]**.

5. However this Court is able to see that P.W.1 to P.W.4 are crucial witnesses and if they are not cross examined, it would be a case of no defence and thereby in order to give an opportunity, this Court enquired the learned Government Advocate(Crl.Side) about the whereabouts of the witnesses and to inform about the stage of the case. The learned Government Advocate(Crl.Side) would submit that the witnesses are very much present in station and they will be able to produce the witness before the trial court, if an order is passed by this Court.

6. As stated earlier, this Court finds that there is no infirmity in the order passed by the Sessions Judge. However, this Court is of the opinion that one more opportunity can be given to the petitioners to recall and cross examine P.Ws 1 to 4. The trial Court is directed to fix the date for appearance of P.W 1 and 2 on 05.12.2018 and P.W.3 and P.W.4 on 06.12.2018 and the respondent shall produce them before the Court and on their appearance, they shall be furnished with the depositions so that the witnesses can refresh their memory and only thereafter, they can be cross examined. On the day when the witnesses appears, if for any reason the petitioners fails to cross examine the witnesses even on account of boy-cott of the Courts, the petitioners will forfeit their right to recall the witnesses again. The petitioners shall pay costs of Rs.1000/- (Rupees One thousand only) to each of the witnesses, when they come for giving evidence. The petitioners shall also pay a sum of Rs.5000/- (Rupees Five thousand only) as costs, to the credit of the High Court Legal Services Committee, on or before 03.12.2018 and file a photocopy of the receipt along with a memo for reporting compliance in the Registry and also before the trial court.



7. The learned counsel for the petitioners is further directed to cross examine all the witnesses on the very same day when they are examined in chief and the Court below shall ensure that the direction given by the Hon'ble Supreme Court in **Vinod Kumar vs. State of Punjab [2015(1) MLJ (cr1) 288]** is strictly complied with.

8. In the result the Criminal Original Petition is allowed on the above terms. Further, since the Sessions Case is of the year 2010, the learned Sessions Judge, Mahalir Neethimandram, Madurai is directed to complete the proceedings as expeditiously as possible preferably within four months from the date of receipt of a copy of this order. The above directions given by this Court shall be strictly complied with. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/TRUE COPY/

Sub Assistant Registrar(CS-III)

To

1. The Sessions Judge,
Mahalir Neethimandram ,Madurai
2. The Inspector of Police
Avaniapuram Police Station
Madurai
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1. C.C. to M/S.M.Lingadurai, Advocate SR.No. 97286

Cr1.O.P. (MD) No.1293 of 2017
and
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27.11.2018

AAV
JM/VR MMS/SAR 3/29.11.2018/3P/5C