



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2018

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P.(MD)No.15953 of 2017
and
CRL.MP(MD)No.10811 of 2017

1.Dencily
2.Majeela

...Petitioners

-Vs-

1.The State of Tamil Nadu
Represented by
The Inspector of Police,
All Woman Police Station,
Nagercoil, Kanyakumari District.
(Crime No.9/2009)

2.Teena

...Respondents

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the order dated 13.11.2017 in C.M.P.No.5278 of 2017 in C.C.No.106 of 2010 on the file of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District, set aside the same and allow the recall petition.

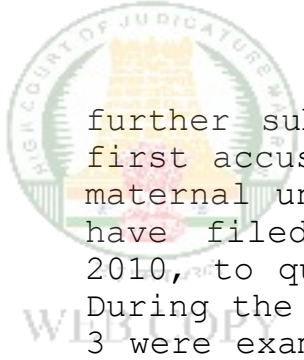
For Petitioner : Mr.S.Xavier Rajini
For 1st Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.side)

O R D E R

This Criminal Original Petition has been filed by the accused Nos. 5 and 6, to set aside the order passed by the learned Judicial Magistrate No.2, Nagercoil, in Cr.M.P.No.5278 of 2017 in C.C.No.106 of 2010, dated 13.11.2017.

2.Notice which was sent to the second respondent has been returned as 'addressee left'. Hence, after hearing the arguments of the learned counsel appearing for the petitioner and the learned Government Advocate, order is being passed.

3.The learned counsel appearing for the petitioners has submitted that the petitioners are facing the trial in C.C.No.106 of 2010 for the charges under Sections 498(A), 406, 294(b), 420, 506 (I) of IPC and Section 4 and 6 of the Dowry Prohibition Act. He



further submitted that the first petitioner is the sister to the first accused's mother and the second petitioner is the wife of the maternal uncle of the first accused. He further submitted that they have filed Criminal Original Petition in CrI.OP(MD).No.14120 of 2010, to quash the proceedings against them, in C.C.No.106 of 2012. During the pendency of the said Criminal Original Petition P.Ws.1 to 3 were examined in chief on 11.07.2016 and the petitioners have not cross examined the said witnesses, because, on the hope that the proceedings against them will be quashed in CrI.OP.No.14120 of 2010. But, consequently, the said Original Petition was dismissed on 23.02.2017, with a direction that the said C.C.No.106 of 2010 should be disposed of within two months. He further submitted that after disposal of the said Criminal original Petition, the petitioners herein have filed a petition under Section 311 of Cr.P.C to recall P.Ws.1 to 3 in C.M.P.No.5278 of 2017 and the same was dismissed by the learned Judicial Magistrate No.II, Nagercoil, without considering the petitioners' request. He further submitted that P.Ws.1 to 3 are material witnesses and unless they are cross examined, the petitioners will put to great hardship.

4.The learned Government Advocate has submitted that the petitioners have not cross examined the witnesses immediately. Further, they have not taken any steps to recall the said witnesses within a reasonable time. He further submitted that after a lapse of one year, they have filed the petition to recall the P.Ws.1 to 3 with an intention to drag on the proceedings and hence, the learned Judicial Magistrate has rightly dismissed the application.

5. A perusal of the records would show that CrI.OP.(MD)No.14120 of 2010 was dismissed on 23.02.2017. Even thereafter, the petitioners have not filed the petition immediately to recall the Pw.1 to 3. It appears that the petitioners have filed the C.M.P.No.5278 of 2017 to recall the PWs.1 to 3 only on 23.10.2017. It shows that the petitioners have not conducted the case diligently. However, considering the nature of the charges levelled against the petitioners and the fact that the P.Ws.1 to 3 are material witnesses, I am inclined to allow this petition by imposing conditions.

6.In the result, this Criminal Original Petition will be allowed, on a condition that the petitioners shall jointly deposit a sum of Rs.3,000/-(Three thousand only) to the credit of the Honourable Chief Justice Relief Fund on or before 05.02.2018 and the order passed in CMP.No.5278 of 2017 in C.C.No.106 of 2010 on the file of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District will be set aside and the petition in Cr.M.P.No.5278 of 2017 in C.C.No.106 of 2010 on the file of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District shall stand allowed. In case, the petitioners failed to comply with the aforesaid conditions, this Criminal Original Petition shall stand dismissed. Consequently, connected CRL.MP(MD)No.10811 of 2017, is closed.



7. Post the matter on 06.02.2018 'for reporting compliance'.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

WEB COPY

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Nagercoil, Kanyakumari.
2. The Inspector of Police,
All Woman Police Station,
Nagercoil, Kanyakumari 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 Mr.S.Xavier Rajini, Advocate, SR.No. 44926

CRL.O.P.(MD) No.15953 of 2017

and

CRL.MP(MD) No.10811 of 2017

29.01.2018

das

AM/SV/SAR 2/09.02.2018/3P/6C