



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.(MD) No. 16600 of 2017
and
Crl.M.P.(MD)No.10974 of 2017

1.Karthik
2.Kannan
3.Shanthi

...Petitioners

-Vs-

1.Radha
2.Minor.Lakshana
(through her mother is natural
guardian is the first respondent)

... Respondents

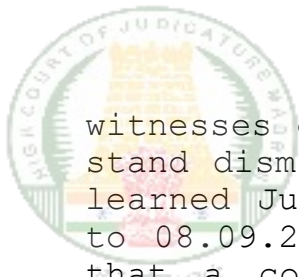
Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order passed in C.M.P.No.2144 of 2017 in D.V.P.No.31 of 2016 on the file of the learned Judicial Magistrate No.I, Karur dated 18.08.2017 and allow the petitioners to cross examine PW1 and PW2.

For Petitioners :Mr.S.Karunakar
For Respondents :Mr.S.Gokul Raj

ORDER

This Criminal Original Petition has been filed by the respondents in D.V.P.No.31 of 2016, to set aside the order passed by the learned Judicial Magistrate No.I, Karur in C.M.P.No.2144 of 2017.

2.The learned counsel appearing for the petitioners has submitted that the respondents herein have filed an application under Section 12 of the Domestic Violence Act and based on the same, it was taken on file in D.V.P.No.31 of 2016. He further submitted that the petitioners herein are the respondents in D.V.P.No.31 of 2016. He further submitted that long back, two witnesses were examined in Chief on behalf of the respondents herein and on that date, the petitioners herein have not cross examined those witnesses and hence, they have filed an application in C.M.P.No.2144 of 2017 under Section 311 Cr.P.C, to recall the Pws.1 and 2 for the purpose of cross examination. He further submitted that the learned Judicial Magistrate No.1, Karur by the order dated 18.08.2017, has directed the petitioners herein to pay a sum of Rs.1000/- to each of the

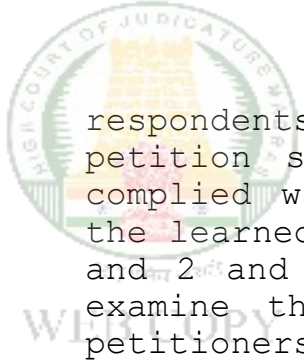


witnesses on or before 31.08.2017, failing which the petition shall stand dismissed. He further submitted that since on 01.09.2017, the learned Judicial Magistrate was on leave, the matter was adjourned to 08.09.2017 and on that date only, the petitioners came to know that a conditional order has been passed and the same was not informed by their counsel and immediately, they represented that they will pay the amount, but, the learned Judicial Magistrate has rejected their request and dismissed the said application. He further submitted that on 14.09.2017, the petitioners herein have filed an application, seeking extension of time and the same was returned. He further submitted that on 14.09.2017, the petitioners herein have filed an application seeking extension of time and the same was returned. He further submitted that since the P.Ws.1 and 2 are material witnesses, an opportunity may be given to the petitioners to cross examine them.

3.The learned counsel for the respondents has submitted that even though the P.Ws.1 and 2 were examined in chief long back, the petitioners have not filed recall petition within a reasonable time. After taking several adjournments, they have filed an application in C.M.P.No.2144 of 2017, to recall the P.Ws.1 and 2 for the purpose of cross examination. Further the learned Judicial Magistrate No.I, Karur, with a view to give an opportunity to the petitioners, has passed a conditional order, but, even the said conditional order was not complied with and purposely, the petitioners have allowed the matter for dismissal. Now, they have filed this petition, with a view to drag on the proceedings. Hence, he has strongly opposed this petition.

4.A copy of the petition filed by the petitioners under Section 311 Cr.P.C. Shows that the petitioners themselves have admitted that the respondents side evidence was closed as early as on 24.03.2017 itself and only on 19.05.2017 the petitioners herein have filed a petition under Section 311 Cr.P.C, to recall the P.Ws.1 and 2. As per the Section 12, Sub Section (5) of the Protection of Women From Domestic Violence Act, the Magistrate shall endeavor to dispose of the application made under Sub Section (1) of the Section 12 within a period of 60 days from the date of first hearing. So, the petitioners herein should have cooperated for early disposal of the application, which was filed under Section 12 of Domestic Violence Act. But, after taking several adjournments, they have filed petition to recall the P.Ws.1 and 2. However, with a view to give an opportunity to them, the learned Judicial Magistrate has passed a conditional order that the said petition will be allowed on payment of cost of Rs.1,000/- to P.Ws.1 and 2 each. But, even the said order also not complied with.

5.Considering the fact that the P.Ws.1 and 2 are material witnesses, this Court is inclined to give one more opportunity to the petitioners to cross examine the P.Ws.1 and 2. Hence, in addition to the cost imposed by the learned Judicial Magistrate, the petitioners are directed to pay a sum of Rs.8,000/- to the



respondents herein on or before 03.04.2018, failing which this petition shall stand dismissed automatically. If the petitioners complied with the aforesaid conditions within the aforesaid time, the learned Judicial Magistrate No.I, Karur has to recall the P.Ws.1 and 2 and give an opportunity to the petitioners herein to cross examine them. Further, on appearance of the P.Ws.1 and 2, the petitioners herein should cross examine them on the same date without seeking further adjournment.

6.With the aforesaid observations, this Criminal Original Petition is disposed of. Consequently, connected CrI.M.P.(MD) No.10974 of 2017, is closed.

Sd/-

Assistant Registrar(CrI.Side)

/True copy/

Sub Assistant Registrar

To
The Judicial Magistrate No.I,
Karur.

+1CC TO M/S.S.KARUNAKAR, ADVOCATE, SR NO.56656
+1CC TO M/S.S.GOKULRAJ, ADVOCATE, SR NO.56745

CrI.O.P.(MD) No. 16600 of 2017
21.03.2018

das

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