



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.09.2018
CORAM:
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).No.9664 of 2017
and
Crl.M.P.(MD)No.6608 of 2017

1.Thomas Tojo
2.F.Soosiya
3.Celin Rani
4.S.Loydge Joyson

...Petitioners

Vs.

1.The State represented by
The Inspector of Police,
All Women Police Station,
Nagercoil.
In Crime No.20/2012.

... Respondent/Complainant

2. E.S.Angel Mary

... Respondent

R2 was impleaded as per order of
this Court in Crl.M.P.(MD)No.6927/2017 in
Crl.O.P.(MD).No.9664/2017 dated 02.08.2017.

PRAYER: Criminal Original Petition filed under Section 482 of the
Cr.P.C., to set aside the order and call for the records passed
in C.M.P.No.2198 of 2017 in C.C.No.271 of 2013, dated 16.05.2017 on
the file of the Judicial Magistrate No.II, Nagercoil.

For Petitioners	: Dr.R.RAJAGOPAL
For Respondents	: Mr.M.Chandra Sekaran Additional Public Prosecutor for R.1
	: Mr.M.R.Sreenivasan for R.2

ORDER

This petition has been filed challenging the order passed by
the Court below dismissing the application filed under Section 311
Cr.P.C. to recall and cross-examine P.W.1 to P.W.7.

2. In this case, the first petitioner is the husband, the
second petitioner is the father-in-law, the third petitioner is the
mother-in-law and the fourth petitioner is the brother-in-law. It
is stated that there is a non-bailable warrant issued against the
first petitioner and the fourth petitioner and therefore, the case
is pending for the purpose of executing the non-bailable warrant.
It is also stated that a look out circular has been issued against
the first petitioner and the same is also pending.

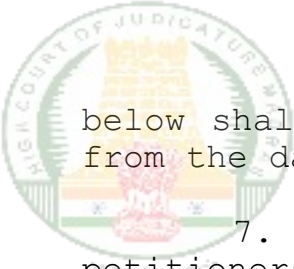


3. This Court directed the Counsel for the petitioners to get instructions from the first and fourth petitioners, as to when they will be able to come over to India in order to participate in the proceedings. The learned Counsel for the petitioner took time to get instructions and in spite of his best efforts, the first petitioner and the fourth petitioner are not willing to give an undertaking before this Court as to when they will be able to appear before the Court below in order to participate in the proceedings. From the conduct of these petitioners, it is clear that they do not want to participate in the proceedings. Therefore, this Court has no other go except to dismiss this petition insofar as the first petitioner and the fourth petitioner (A.1 and A.4) are concerned.

4. The second and third petitioners are the father-in-law and the mother-in-law of the defacto complainant. The examination of the witnesses started on 12.01.2017 and ended on 03.07.2017 by examination of P.W.11. The only other witness who is yet to be examined is the Investigating Officer. At this stage, the petitioners have filed this petition to recall P.W.1 to P.W.7 in order to cross-examine them and the Court below has dismissed the petition. Taking into consideration the facts and circumstances of the case, this Court is of the view that one last opportunity can be given to the second and third petitioners to cross-examine the witnesses. The Court below shall fix a date for the appearance of the witnesses viz., P.W.1 to P.W.7. Before putting the witnesses in the witness box, they shall be furnished with the deposition, so that they can refresh their memory and only thereafter they can be subjected to cross-examination. On the date when the witness appears, if the second and third petitioners fail to cross-examine them, they will forfeit their right to recall them again. The second and third petitioners shall pay a cost of Rs.500/- (Rupees Five Hundred only) to each of the witnesses when they come for giving evidence. It is also made clear that the second and third petitioners shall cross-examine, any other witness examined on the side of the prosecution, on the same when they are examined in chief, failing which the second and third petitioners will forfeit their right to recall those witnesses also.

5. In view of the non-availability of the first and fourth petitioners, the Court below is direct to split up the case and proceed with the trial insofar as the second and third petitioners are concerned. This Court has already passed an order dated 15.09.202016 fixing the time limit for completion of the proceedings. However, the Court below was not able to complete the proceedings in view of the fact that A.1 and A.4 were not appearing in the Court and the Non-Bailable Warrant issued against them is pending.

6. In view of the fact that, this Court has directed the Court below to split up the case and proceed further insofar as the second and third petitioners (A.2 and A.3) are concerned, the Court



below shall complete the proceedings within a period of two months from the date of receipt of a copy of this order.

7. In view of the conduct of the first and fourth petitioners, the respondent police is directed to take effective steps to secure their presence and subject them to trial before the Court below in C.C.No.271 of 2013. In spite of an opportunity given by this Court several times, the first and fourth petitioners were not willing to take advantage of the opportunity and were trying only to drag on the proceedings. In view of the attitude of the first and fourth petitioners, the Court below shall ensure that immediately after they are secured, they are brought before the Court and their presence is ensured, in order to complete the trial in C.C.No.271 of 2013.

8. The Criminal original Petition is disposed of with the above directions.

Sd/-

Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The Judicial Magistrate Court No.II,
Nagercoil.

2.The Inspector of Police,
All Women Police Station,
Nagercoil.

+1CC to Mr.M.R.Sreenivasan, Advocate, SR.No.86903

+1CC to Dr.R.RAJAGOPAL, Advocate, SR.No.86777

Cr1.O.P. (MD) .No.9664 of 2017

26.09.2018

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SSL

ES/SKN/RSK/SAR 2/15.10.2018/3P/5C