



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2018

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

Cr1.O.P.(MD)No.9765 of 2018

1.M.Rajendran
2.Gandhimathi

... Petitioners

-Vs-

The Inspector of Police,
All Women Police Station,
Samayanallur,
Madurai District.
(Crime No.2 of 2012)

... Respondent

Prayer: Petition is filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 10.04.2018, passed in Cr.M.P.No.981 of 2018 by the learned Judicial Magistrate, Vadipatti and consequently, direct the Trial Court to allow the 'Recall of Witness (P.W.1)' under Section 311 Cr.P.C. in order to ensure fair trial to the accused/petitioners.

For Petitioners : Mr.K.S.Duraipandian
For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate(Criminal side)

ORDER

This Criminal Original Petition has been filed to set aside the order dated 10.04.2018, passed in Cr.M.P.No.981 of 2018 by the learned Judicial Magistrate, Vadipatti and consequently, direct the Trial Court to allow the 'Recall of Witness (P.W.1)' under Section 311 Cr.P.C. in order to ensure fair trial to the accused/petitioners.

2.According to the petitioners, they filed an application under Section 311 Cr.P.C., before the Judicial Magistrate Court, Vadipatti, to recall P.Ws.1 to 4 and to cross-examine them. The respondent has not filed counter affidavit. The Trial Court has considered the application filed by the petitioners and the same was dismissed without assigning any reason. Therefore, the petitioners have filed the present Criminal Original Petition before this Court.

3.During the course of arguments, the learned counsel for the petitioners submitted that P.W.2 was examined, but the Court below



has recorded that in spite of an opportunity being granted to the petitioners, they have not come forward to cross-examine P.W.2. and therefore, the petitioners have come forward to cross-examine P.W.2.

4.The learned Government Advocate (Criminal side) submitted that the continuation of chief examination of P.W.1 before the Trial Court was conducted on 22.06.2016 and the evidence of P.Ws.2, 3 and 4 were closed on 23.01.2018 and 27.03.2018 respectively.

5.The contentions of the parties have not been discussed in the order passed by the Court below. Therefore, this Court has no hesitation to quash the order dated 10.04.2018, made in Cr.M.P.No.981 of 2018. Accordingly, the impugned order dated 10.04.2018, passed in Cr.M.P.No.981 of 2018 by the learned Judicial Magistrate, Vadipatti, is quashed. It is open to the parties to file any additional affidavit before the Trial Court, within a period of one week from the date of receipt of a copy of this order and thereafter, the respondent shall file counter affidavit within a period of two weeks and thereafter, the learned Judicial Magistrate, Vadipatti, shall dispose of the said application on merits and in accordance with law, as expeditiously as possible, preferably within a period of four weeks.

6.Accordingly, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Vadipatti.
2. The Inspector of Police,
All Women Police Station,
Samayanallur,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

SMN2

VB/PN/SAR2/03.07.2018/2P/4C

CrI.O.P.(MD) No.9765 of 2018

18.06.2018