



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1 OP(MD)No.10320 of 2018
and
Cr1MP(MD)No.4601 of 2018

1.S.Chandrika

2.Dr.K.Subbaraman

... Petitioners/A1 and A2

Vs.

The Inspector of Police,
Kottar Police Station,
Kanyakumari District.
[Crime No.220 of 2009]

...Respondent/Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 06.06.2018 passed in Cr.MP(MD)No.1887 of 2018 in CC.No.223 of 2011 on the file of the Judicial Magistrate No.II, Nagercoil.

For Petitioners : Mr.R.J.Karthick
For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Cr1 Side)

ORDER

This petition has been filed challenging the order passed by the learned Judicial Magistrate No. II, Nagercoil, dismissing the application filed by the petitioner under Section 311 CrPC to recall P.W.1 to P.W.4 and P.W.11 to P.W.16 and to cross examine them.

2.The petitioners are A-1 and A-2 in CC.No.223 of 2011 and are facing trial for the offence under Sections 420 and 506 (ii) IPC.

3.The prosecution has examined 23 witnesses, out of which, the petitioners did not cross examine P.W.1 to P.W.4 and P.W.11 to P.W.16. A petition to recall the witnesses was filed on the ground that the father of the defacto complainant is a senior Advocate, who is practising in the same Court and therefore, the Advocates in Nagercoil were hesitating to appear on behalf of the petitioners. In the petition, it has been further stated that Cr1OP(MD)No.8413 of 2011 was filed to quash the proceedings and the Cr1OP(MD)No.8909 of 2011 was filed to transfer the case and both these cases were pending before this Court and they got dismissed only in the year 2018. It has been further stated in the petition that the witnesses



were not able to be cross examined due to non availability of certain documents.

4.The Court below had considered the petition filed by the petitioners, came to a conclusion that the case has been pending for almost seven years and even in the petition that was filed before this Court, there was no order of stay and therefore nothing prevented the petitioners from examining the witnesses. That apart, this Court had also directed the Court below to dispose of the case within a time frame.

5.The learned Counsel for the petitioners would submit that both the petitioners are Doctors and are senior citizens. The petitioners had difficulty in engaging Counsel, since most of the Advocates at Nagercoil were hesitating to appear for them, since the father of the defacto complainant is a practising Advocate in that Court. The learned Counsel would further submit that the transfer petition was filed before this Court only on that ground. However, this Court dismissed the transfer petition. In the meantime many of the witnesses were examined in chief. The learned Counsel pleads for one last opportunity to the petitioners to examine the witnesses and in order to effectively defend the case.

6.The learned Government Advocate submitted that there is no illegality or infirmity in the order passed by the Court below in dismissing the application filed under Section 311 CrPC. The learned Government Advocate would further submit that the case has been pending for more than seven years and this Court has already directed the case to be disposed of within a time frame and the petitioners are dragging on the proceedings.

7.This Court carefully considered the submissions made by either side.

8.The petitioners have raised a noteworthy ground to the effect that the Advocates at Nagercoil were hesitating to appear for them due to the fact that the father of the defacto complainant is a senior Advocate practising in the same Court. In fact, Criminal Original Petition was filed before this Court for transfer of the case on that ground and the Criminal Original Petition came to be dismissed in the year 2018. Only thereafter, steps have been taken by the petitioners to recall and cross examine the witnesses. This Court also takes note of the fact that the petitioners have cross examined all other witnesses in this case. Therefore one last opportunity can be given to the petitioners to recall and cross examine P.W.1 to P.W.4 and P.W.11 to P.W.16.

9.The order passed by the learned Judicial Magistrate No.II, Nagercoil in Cr.MP No.1887 of 2018, dated 06.06.2018 is hereby set aside. The petitioners are permitted to recall and cross examine

P.W.1 to P.W.4 and P.W.11 to P.W.16.

10.The trial Court shall ensure the availability of the witnesses before issuing process. The trial Court shall fix a date for appearance of the witnesses before putting the witnesses in witness box. They shall be furnished with deposition, so that they can refresh their memory and only thereafter they can be subjected to cross examination. On the day, when the witnesses appear, if the petitioners fail to cross examine them even on account of Boycott of Courts, the petitioners will forfeit their right to recall them again.

11.Each of the petitioners shall pay the cost of Rs.2,500/-, to each of the witnesses, when they come for giving evidence. If any other witness are examined on the side of the prosecution, the petitioners shall cross examine those witnesses also on the very same day when they are examined in chief and the trial Court shall ensure that the directions issued by the Hon'ble Supreme Court of India in *Vinod Kumar Vs State of Punjab*, reported in 2015 (3) SCC 220, are strictly complied with.

12.This Criminal Original Petition stands allowed on the above directions. Consequently, CrI MP(MD)No.4601 of 2018 is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.Judicial Magistrate No.II,
Nagercoil.

2.The Inspector of Police,
Kottar Police Station,
Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.R.J.KARTHICK ADVOCATE IN S.R.NO.79791.

DSK

DS RSK SAR-1:25.09.2018: 3P/5C