



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2018

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CRL.O.P.(MD)No.11160 of 2018

and

Crl.M.P(MD)Nos.5062 & 5063 of 2018

1.Mahin Abubacker
2.Navab John
3.Jahir Hussian
4.Shalisha

... Petitioners/Petitioners/
Accused Nos.1 to 4

-vs-

The State rep. by
The Inspector of Police,
Kottar Police Station,
Nagercoil,
Kanyakumari District.

... Respondent/Respondent/
Complainant

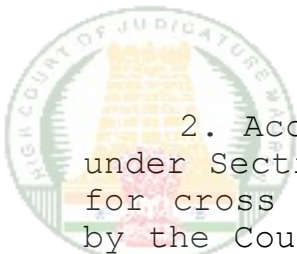
Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to set aside the order of Learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District, dated 31.05.2018 made in C.M.P.No.2024 of 2018 in C.C.No.148 of 2014 and to direct Learned Judicial Magistrate No.II, Nagercoil to recall the witness PW1 to PW4 for cross examination.

For Petitioners : Mr.B.Jeyakumar

For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.side)

ORDER

This petition has been filed praying this Court to set aside the order of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District, dated 31.05.2018 made in C.M.P.No.2024 of 2018 in C.C.No.148 of 2014 and to direct the learned Judicial Magistrate No.II, Nagercoil to recall the witnesses PW1 to PW4 for cross-examination.



2. According to the petitioners, they have filed an application under Section 311 of Cr.P.C., to recall the witnesses P.W.1 to P.W.4 for cross examination. However, the said application was dismissed by the Court below and challenging the same, this petition has been filed.

3. The learned counsel appearing for the petitioners submitted that based on the complaint given by the defacto complainant against the petitioners, a case was registered for the offences punishable under Sections 294(b) and 324 of IPC and the same is now pending in C.C.No.148 of 2014, before the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District. He would further submit that the reasons has been stated in the application that the petitioners have to engage a counsel through Legal Aid and they are all coolie workers and further, the cross-examination of P.Ws.1 & 2 were concluded on 31.08.2016 and P.Ws.3 & 4 were concluded on 26.03.2018 respectively. Without considering the reasons stated in the application, the court below has erroneously dismissed the application. He would further submit that as per the provision under Section 311 Cr.P.C., the petitioners, at any stage, can file an application before the concerned Court to recall the witnesses.

4.The learned Government Advocate (Crl.side) would submit that the petitioners have approached the Court after a lapse of two years from the date of examination of witnesses P.Ws.1 & 2. Therefore, the Court below has rightly dismissed the said application.

5. The learned Counsel would further submit that indisputably P.Ws1 & 2 were examined on 31.08.2016. Since the petitioner sought for appointment of Legal Aid counsel, there was delay in filing the application in time. Only for the aforesaid bonafide reasons, he has not chosen to file the application, in time

6.In respect of P.Ws.3 & 4 are concerned, the application was filed on 10.04.2018, the evidences of P.Ws.1 & 2 were concluded on 31.08.2016 and therefore, the recall of evidences P.Ws.3 & 4 has not been properly considered by the Court below.

7.The present order has been passed by the learned Judicial Magistrate No.II, Nagercoil on the ground that the application to recall the witnesses was filed after a lapse of two years. At this stage, the learned counsel for the petitioner requested this Court that the petitioner will file the additional particulars for the delay caused in filing the application.

8.In view of the above, the impugned order passed in C.M.P.No.2024 of 2018 by the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District is set aside and the same is remanded back to the learned Judicial Magistrate No.II, Nagercoil and to consider the same afresh and pass orders after providing an opportunity to both parties, as expeditiously as possible. If necessary, the petitioner is permitted to file additional particulars.



9. In the light of the above, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (AS)

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/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
Kottar Police Station,
Nagercoil.
2. The Judicial Magistrate No. II,
Nagercoil.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.B.Jeyakumar, Advocate SR.No. 71670

CRL.O.P. (MD) No. 11160 of 2018
05.07.2018

am

JM/SKN RSK/SAR 3/02.08.2018/3P/5C