



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) No.14403 of 2018

and

Crl.M.P (MD) No.6443 of 2018

1. Ramakrishnan

2. Muniyandi

.... Petitioners/Petitioners/Accused A1 & A2

Vs.

The State Rep by

The Inspector of Police

Cumbum South Police Station

Theni District

Crime No.80 of 2014 ...Respondent/Respondent/Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed by the Hon'ble Judicial Magistrate at Uthamapalayam in Cr.M.P.No.4248 of 2018 in C.C.No.120 of 2014 dated 13.07.2018.

For Petitioners

: Mr.J.Senthil Kumaraiah

For Respondent

: Mr.K.Suyambulinga Bharathi

Government Advocate (Crl. Side)

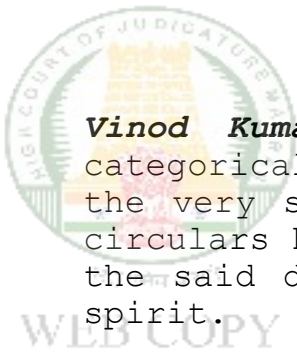
ORDER

This Criminal Original Petition has been filed challenging the order passed by the learned Judicial Magistrate, Uthamapalayam dismissing the petition filed under section 311 of Cr.P.C to recall and cross examine P.W's 1 to 3.

2. The learned Judicial Magistrate, Uthamapalayam has dismissed the petition on the ground that P.W's 1 to 3 were examined in chief as early as on 16.12.2015 and they were not cross examined by the counsel for the petitioners and after delay of more that 2 ½ years, the present petition has been filed to recall and cross examine the above said witnesses. The learned Judicial Magistrate, Uthamapalayam has also taken into consideration, the fact that the case is at the stage of defence witness. That apart no acceptable reason has been given in the petition as to why the petitioners did not take any steps to cross examine PW's 1 to 3 for more than 2 ½ years. However, the fact that has been recorded in the order is that on 16.12.2015 when the witnesses were examined, the petitioners were not present in the court and they were represented by the counsel after filing a petition under section 317 Cr.P.C.

<https://hcservices.ecourts.gov.in/hcservices/>

3. This Court does not find any illegality or infirmity in the order passed by the Court below. The Honourable Supreme Court in



Vinod Kumar vs. State of Punjab [2015(1) MLJ (crl) 288] has categorically held that witnesses will have to be cross examined on the very same day they are examined in chief. Following the same, circulars have also been issued to the Subordinate Courts to follow the said dictum of the Honourable Supreme Court in its letter and spirit.

4. The learned counsel for the petitioners would submit that the counsel representing the petitioners in the Court below has failed to cross examine the witnesses and for the mistake of the counsel, the petitioners should not suffer. The petitioners are facing charges before the trial court for offences under sections 341, 294(b), 323, 324 and 506(ii) of IPC. Admittedly the case is at the stage of the examination of defence witness.

5. On the facts and circumstances of the case and in order to afford one last opportunity to the petitioners to defend themselves in the case, this Court deems it fit, to set aside the order passed by the learned Judicial Magistrate, Uthamapalayam and permit the petitioners to recall and cross examine PW's 1 to 3. The trial court shall ensure the availability of the witnesses and shall fix a date for the appearance of the witnesses. Before putting witnesses in the witness box, he shall be furnished with depositions so that the witness can refresh his memory and only thereafter he can be cross examined. On that day when the witnesses appears, if the accused fails to cross examine him even on account of boycott of the Courts, the accused will forfeit his right to recall him again. Each of the petitioners shall pay a costs of Rs.3000/- (Rupees Three thousand only) to each of the witnesses namely PW's 1 to 3 when they come for giving evidence.

6. With the above direction, the Criminal Original Petition is allowed. Consequently connected miscellaneous petition is closed.

Sd/-

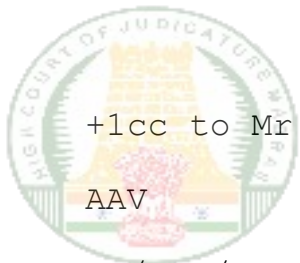
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(Cs-II)

To

1. The Judicial Magistrate
Uthamapalayam
2. The Inspector of Police
Cumbum South Police Station
Theni District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



+1cc to Mr.J.Senthil Kumaraiah, Advocate Sr.No.78902

AAV

VB/KAK/SAR2/04.09.2018/3P/5C

WEB COPY

Cr1.O.P. (MD) No.14403 of 2018
and
Cr1.M.P (MD) No.6443 of 2018
14.08.2018