



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.14417 of 2018

1. K.Jothisa Jasmine

2. T.Kumar

.... Petitioners/Accused No.1 and 2

Vs.

The Inspector of Police
Thuckalay Police Station
Kanyakumari District
Crime No.126 of 2011

...Respondent/Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 24.07.2018 passed in Cr.M.P.No.2988 of 2018 in C.C. No.57 of 2012 on the file of the Judicial Magistrate No.I, **(*) Padmanabhapuram.**

For Petitioners

: Mr.R.J.Karthick

For Respondent

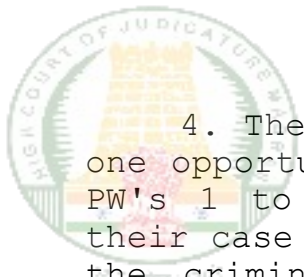
: Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed challenging the order passed by the learned Judicial Magistrate No.I, Padmanabhapuram dismissing the application filed under section 311 of Cr.P.C to recall and cross examine PW's 1 to 4.

2. The petitioners are facing trial for an offence punishable under sections 294(b), 323 and 506(ii) of IPC. P.W's 1 to 4 were examined in chief by the prosecution on 24.04.2017. On the said day they were not cross examined by the counsel representing the petitioners. Other witnesses who were examined by the prosecution were cross examined by the counsel for the petitioners. Subsequently on 29.06.2018, the petition came to be filed by the petitioners to recall and cross examine PW's 1 to 4. The reason that was given in the said petition for not cross examining PW's 1 to 4 was that the counsel who was representing the petitioner was attending to his minor son who was hospitalised on the particular day.

3. The Court below on considering the reasons assigned in the petition filed by the petitioners was not convinced and as a result of the same dismissed the petition by an order dated 24.07.2018.



4. The learned counsel for the petitioners would submit that if one opportunity is given to petitioners to recall and cross examine PW's 1 to 4, the petitioners will be able to effectively defend their case and denial of the same will expose them to conviction in the criminal case pending against them. Per contra the learned counsel for the respondent would submit that Sec 313 questioning was over and case is at the stage of examination of defence witness. He would further submit that the court below has considered the merits of the petition filed by the petitioner and that there is no illegality or infirmity in the order passed by the court below.

5. This Court has carefully considered the submissions made on either side and has also gone through the materials placed before this Court. The petitioners are facing trial for offences under section 294(b), 323 and 506(ii) of IPC. The petitioners have cross examined all the other witnesses except PW.1 to 4. PW 1 to 4 were examined in chief on 24.04.2018 and on that day the counsel for the petitioners was not able to be present in Court to cross examine them. This Court is of the considered view that one last opportunity can be given to the petitioners to recall and cross examine PW's 1 to 4.

6. Accordingly the order passed by the learned Judicial Magistrate No.I, Padmanabhapuram in C.M.P No.2988 of 2018 dated 24.07.2018 is hereby set aside and the petitioners are permitted to recall and cross examine PW's 1 to 4. 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.2000/- (Rupees Two thousand only) to each of the witnesses namely PW's 1 to 4 when they come for giving evidence.

7. With the above direction, the Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CO)

**(*)Amended as per order of this
Hon'ble Court dated 11.09.2018.**

/True Copy/

Sub Assistant Registrar(CS-IV)



To

1. The Judicial Magistrate No.I
Padmanabhapuram.
- 2.The Chief Judicial Magistrate,
Nagercoil at Kanniyakumari.
- 3.The Inspector of Police
Thuckalay Police Station
Kanyakumari District
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.R.J.KARTHICK, ADVOCATE IN SR.NO.78610.

AAV

DS PM SAR-4 09.10.2018 3P/6C

Cr1.O.P.(MD)No.14417 of 2018

14.08.2018