



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) No.14447 of 2018
and
Crl.M.P (MD) No.6471 of 2018

1. Pandian
2. Rajesh Kannan

... Petitioners

Vs.

The State represented by
The Sub Inspector of Police
Rayappanpatti Police Station
Madurai District
Crime No.29 of 2013

... Respondent

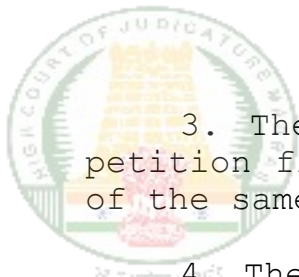
Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and to set aside the order passed in Cr.M.P.No.2647 of 2018 dated 18.05.2018 on the file of the learned Judicial Magistrate, Uthamapalayam in C.C.No.229 of 2013 on the file of the learned Judicial Magistrate, Uthamapalayam.

For Petitioners	: Mr.AK.Azagarsami
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 application filed under section 311 of Cr.P.C to recall and cross examine PW's 1 to 3.

2. The petitioners are facing trial for an offence punishable under sections 447, 427 and 506(ii) of IPC. P.W's 1 to 4 were examined in chief by the prosecution on 13.03.2018. 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 05.04.2018, the petition came to be filed by the petitioners to recall and cross examine PW's 1 to 3. The reason that was given in the said petition for not cross examining PW's 1 to 3 was that, due to boycott of the Court proceedings, the petitioner's counsel could not appear before the court below.



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 18.05.2018.

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 3, 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 the case is still in the stage of examination of prosecution 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 sections 447, 427 and 506(ii) of IPC. The petitioners have cross examined all the other witnesses except PW.1 to 3. PW 1 to 3 were examined in chief on 13.03.2018 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 3.

6. Accordingly the order passed by the learned Judicial Magistrate Uthamapalayam in Cr.M.P.No.2647 of 2018 dated 18.05.2018 is hereby set aside and the petitioners are permitted 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 the 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.1000/- (Rupees One thousand only) to each of the witnesses namely PW's 1 to 3 when they come for giving evidence.

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

Sd/-

Assistant Registrar (Crl.side)

/True Copy/



To

1. The Judicial Magistrate
Uthamapalayam

2. The Sub Inspector of Police
Rayappanpatti Police Station
Madurai District

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

AAV

TE/JM/RSK/SAR-3 : 11/09/2018 : 3P/4C

Cr1.O.P. (MD) No.14447 of 2018
14.08.2018