



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.(MD)No.14800 of 2018
and CrI.M.P (MD) No. 6564 of 2018

1. Samsudeen
2. Subbaiah
3. Essakkimuthu @ Rasukutti
4. Essakki @ Essakkiyappan
5. Chinnapaiyan

...Petitioners/Petitioners/
Accused Nos.1 to 5

Vs.

The Sub-Inspector of Police,
Pettai Police Station,
Tirunelveli District.

...Respondent/Respondent/
Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and set aside the order dated 23.07.2018 passed in C.M.P. No.1743 of 2018 in C.C. No.475 of 2009 on the file of the learned Judicial Magistrate-V, Tirunelveli, Tirunelveli District.

For Petitioner: Mr. A. Thiruvadi Kumar
For Respondent: Mr.K.Suyambulinga Bharathi
Government Advocate (CrI. Side)

ORDER

This Criminal Original Petition has been filed challenging the order passed by the learned Judicial Magistrate-V, Tirunelveli, dismissing an application filed by the petitioners under Section 311 of Criminal Procedure Code to recall P.W.1, 2 & 8. The Court below has dismissed the petition in so far as P.W.1, 2 are concerned on the ground that on an earlier occasion, the petitioners had filed a similar petition to recall P.W.1, 2 and the same was dismissed by an Order dated 07.12.2017 and the said order has become final. Therefore, another application for a similar prayer is not maintainable. However, in so far as P.W.8 is concerned, the Court below allowed the application with condition that the petitioners should pay Rs.3,000/- (Rupees Three Thousand Only) to P.W.8 and further sum of Rs.2000/- (Rupees Two



Thousand Only) to the District Legal Services Authority.

2. Heard learned counsel appearing for the petitioners and learned Government Advocate(Crl.Side) for the respondent.

3. Perused the materials placed on record.

4. The learned counsel for the petitioners fairly submitted that the petitioners are aggrieved only in so far as imposition of condition for recalling and cross examining P.W.8.

5. It is seen from the records that P.W.8 was examined on 04.04.2018 and the petitioner did not cross examine P.W.8 on the same day. This Court deems it fit to give her a fair opportunity to the petitioners and it is also does not want to burden the petitioners with onerous condition.

6. Accordingly, this Criminal Original Petition is partly allowed and the order of the Court below, in so far as dismissing the application to recall P.W.1 & 2 is hereby confirmed. As so far as P.W.8 is concerned, the order of the Court below is modified to the effect that the petitioners shall pay a sum of Rs.1000/- (Rupees Thousand Only) to P.W.8 when the said witness comes for giving evidence.

7. It is made clear that the Court below shall fix the date for appearance of P.W.8 and on the day when P.W.8 appears before the Court, on the same day, the petitioners have to cross examine P.W.8 and if for any reason P.W.8 is not cross examined on the said date, when he appears, the petitioners shall forfeit their right to recall and cross examine P.W.8.

8. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl-SIDE)

// True Copy //

Sub Assistant Registrar(CS-III)

To

1. The Judicial Magistrate No.V,

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



2. The Sub-Inspector of Police,
Pettai Police Station,
Tirunelveli District.

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

+ 1 CC TO MR.A. THIRUVADI KUMAR, ADVOCATE IN SR NO.80064

KSA

BU/RP/SAR-III : 09.10.2018 : 3P/5C

Cr1.O.P. (MD) No.14800 of 2018
23.08.2018