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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CrI.O.P. (MD) .No.15005 of 2018

and

CRL.M.P. (MD) .No.6650 of 2018

1.Benjamin
2.Rajadurai
3.Thankaraj

...Petitioners

Vs.

The Sub Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed by the learned Judicial Magistrate Court, Padmanabapuram in C.M.P.No.2780 of 2018 in C.C.No.219 of 2013 dated 24.07.2018.

For Petitioners
For Respondent

:Mr.S.Pugalendhi
:Mr.M.Chandra Sekaran
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed seeking to set aside the order passed by the learned Judicial Magistrate, Padmanabhapuram, dismissing the application filed by the petitioners under Section 311 Cr.P.C. to recall and cross examine P.W.1 to P.W.3.

2. A reading of the order of dismissal passed by the Court below shows that P.W.1 and P.W.2 were examined on 26.08.2016 and Pw3 was examined on 09.11.2016. Subsequently, two other witnesses have also been examined and 313 (1) (b) Question was also over. Subsequently, at the stage of final arguments, the petitioners who are Accused Nos.1 to 3, have chosen to file an application to recall and cross-examine P.W.1 to P.W.3 and C.M.P.No.2780 of 2018 was filed only on 29.06.2018.

3. The Court below has rightly dismissed the application filed by the petitioners to recall P.W.1 to P.W.3. The reasons set out in the petition for cross-examining P.W.1 to P.W.3 and not taking steps at the earliest point of time, are totally vague and not satisfactory.

4. The learned counsel appearing for the petitioners would submit that there is a case and counter and there is a separate



trial that is going on based on a complaint given by these petitioners. The learned counsel would further submit that during the time when P.W.1 and P.W.2 were examined in chief, a compromise talks were going on between the parties and therefore P.W.1 and P.W.2 were not cross-examined.

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5. Even though this Court is not convinced with the reasons assigned in the petition, in order to afford a last opportunity to the petitioners, this Court deems it fit to permit the petitioners to recall and cross-examine P.W.1 to P.W.3.

6. Accordingly the order of the Court below made in C.M.P.No.2780 of 2018, dated 24.07.2018, is hereby set aside. The trial Court shall fix a date for the appearance of P.W.1 to P.W.3. Before putting them on box, they shall be furnished with a deposition, so that they can refresh their memory and only thereafter, they can be subjected to cross-examination. On the date when the witnesses appear, if the petitioners failed to cross-examine them, the petitioners will forfeit their right to recall the witnesses again. The petitioners shall pay a cost of Rs.2,500/- (Rupees Two Thousand Five Hundred only) to each of the witnesses when they come for giving evidence. The C.C. is of the year 2013. Therefore, there shall be a direction to the learned Judicial Magistrate, Padmanabhapuram, to complete the proceedings within a period of two months from the date of receipt of copy of this order.

7. The Criminal Original Petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar(CS-II)

To

1. The Judicial Magistrate, Padmanabapuram.

(To submit a report to the Registry
regarding the compliance of the order
of this court on completion of proceedings)

2.The Chief Judicial Magistrate, Kanniyakumari at Nagercoil.

3.The Sub Inspector of Police,
Thuckalay Police Station,

Kanniyakumari District.



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

+1cc to Mr.S.Pugalendhi, Advocate Sr.No.80151

TSG

VB/SV/SAR2/12.09.2018/3P/6C

Cr1.O.P. (MD) .No.15005 of 2018
24.08.2018