



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
Crl.O.P.(MD)No.16628 of 2018
and
Crl.M.P(MD).No.7371 of 2018

1.Saroja
2.Salini

: Petitioners

Vs.

The Sub Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.
(Crime No.105 of 2009)

: Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C to set aside the order dated 31.05.2017 passed in Cr.M.P.No.1914 of 2017 in C.C.No.38 of 2010 on the file of the Judicial Magistrate, Padmanabhapuram.

For Petitioners
For Respondent

: Mr.R.J.Karthick
: Mr.K.Suyambulinga Bharathi
Government Advocate(crl.side)

ORDER

This petition has been filed aggrieved by the dismissal of an application filed under Section 311 Cr.P..C in Cr.M.P.No.1914 of 2017 in C.C.No.38 of 2010 on the file of the Judicial Magistrate, Padmanabhapuram, to recall and cross-examine of P.W.1 and P.W.2.

2.The petitioners are arrayed as A1 and A3 in C.C.No.38 of 2010. The petitioners are facing trial for an offence under Sections 147, 148, 447, 427, 294(b), 324, 379 and 506(ii) IPC r/w Section 511 IPC. In this case, totally seven witnesses have been examined.

3.The Court below while considering the application, has given a finding that the petitioners had filed an application earlier in the year 2011 and the same was allowed. However, no process batta was paid and the witnesses were not served with the summons and the case was kept pending for more than five years. Therefore, the Court below thought it fit to dismiss the application filed by the petitioners.

4.The learned Government Advocate (Crl.side), on instructions, would submit that the prosecution has already examined seven



witnesses and the case is posted for examination of further witnesses on 03.10.2018 and there are totally nine witnesses in this case.

5. Taking into consideration the facts and circumstances of the case, this Court deems it fit to give the petitioners one last opportunity to recall and cross-examine P.W.1 and P.W.2. The Court below shall fix the date for appearance of P.W.1 and P.W.2. Before putting the witnesses in the witness box, they shall be furnished depositions so that they can refresh their memory and only thereafter, they can subject to cross-examine. On the day, when the witnesses appear, if the petitioners fail to cross-examine them, the petitioners will forfeit their right to recall the witnesses again. It is also made clear that the petitioners shall cross-examine all the other witnesses examined on the side of prosecution, on the very same day, they are examined in chief, failing which the petitioners will forfeit their right to recall the further witnesses also. Each of the petitioners shall pay a cost of Rs.1,000/- (Rupees One Thousand only) to each of the witness namely P.W.1 and P.W.2, when they come for giving evidence.

6. Accordingly, the order passed in Cr.M.P.No.1914 of 2017 by the learned Judicial Magistrate, Padmanabhapuram, is hereby set aside and this Criminal Original Petition is allowed with the directions as mentioned above. Taking into consideration the fact that C.C is of the year 2010, this Court directs the learned Judicial Magistrate, Padmanabhapuram, to complete the proceedings within a period of three months from the date of receipt of a copy of this order and report compliance on the same before this Court, after the completion of the proceedings. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(WRITS)

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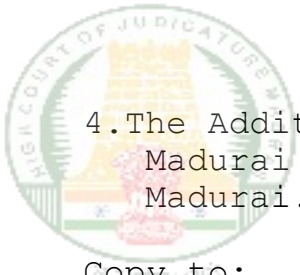
Sub Assistant Registrar(CS-I)

To

1. The Judicial Magistrate,
Padmanabhapuram.

2. The Chief Judicial Magistrate,
Kanyakumari.

3. The Sub Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.



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

Copy to:

1.The Registrar(Judicial)
Madurai Bench of Madras High Court,
Madurai.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

+1CC TO MR.R.J.KARTHICK, ADVOCATE IN S.R.NO.84927.

RMK

DS SV SAR-1:24.09.2018: 3P/9C

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and
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