



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
Crl.O.P. (MD) No.17248 of 2018

WEB COPY

1.Vijayakesari
2.Rajendran
3.Murugesan

: Petitioners

Vs.

The Inspector of Police,
Kottar Police Station,
Kanyakumari District.
Crime No.585 of 2018

: Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records and set aside the order passed by the learned Judicial Magistrate No.II, Nagercoil in Cr.M.P.No.3432 of 2018 in C.C.No.90 of 2018, dated 29.08.2018 in respect of dismissing the petition filed by the petitioner under Section 311 of Cr.P.C for recalling of P.W.10 for cross examination on the file of the respondent police, within a time frame fixed by this Court by allowing this Petition.

For Petitioner
For Respondent

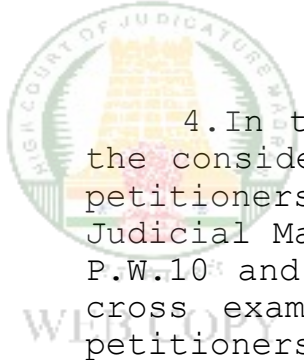
: Mr.S.R.Sathan Boopathy
: Mr.K.Suyambulinga Bharathi
Government Advocate(Crl.side)

ORDER

This Criminal Original Petition has been filed challenging the order passed by the learned Judicial Magistrate No.II, Nagercoil, dismissing the application filed by the petitioners under Section 311 Cr.P.C to re-call the P.W.10 for cross examination.

2.The petitioners, who are arrayed as A1, A3 and A4 are facing trial before the court below for an offence under Sections 447, 427, 294(b), 506(ii) I.P.C.

3.It is seen from the records that P.W.10 was cross examined on the side of the prosecution on 05.03.2018. On the said day, the counsel representing the petitioners did not cross examine P.W.10. Therefore, the petition was filed on 16.07.2018 to re-call P.W.10 for cross examining him. This petition has been dismissed by the court below on the ground that there is a delay of four months in filing the application to re-call P.W.10.



4. In the facts and circumstances of the case, this Court is of the considered view that one final opportunity must be given to the petitioners to re-call and cross examine P.W.10. The learned Judicial Magistrate No.II, Nagercoil is directed to issue summons to P.W.10 and on the day, when P.W.10 appears, the petitioners shall cross examine P.W.10 on the very same day and if in case, the petitioners fail to cross examine P.W.10, on the day when he is present in court, the petitioners shall forfeit their right to cross examine P.W.10, thereafter. It is also made clear that the petitioners shall cross examine all other witnesses, who are examined by the prosecution, on the same day they are examined in Chief.

5. In fine the order passed by the learned Judicial Magistrate No.II, Nagercoil, in CrI.M.P.No.3432 of 2018 is hereby set aside and this Criminal Original Petition is allowed with the above directions.

Sd/
Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar(CS-II)

To

1. The Judicial Magistrate No.II,
Nagercoil.
2. The Inspector of Police,
Kottar Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P. (MD) No.17248 of 2018
27.09.2018

das
KK/SV/SAR-2/24.10.2018/2P-4C