



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **25.10.2018**
CORAM
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WEB COPY

Crl.O.P.(MD) No.17568 of 2018
and
Crl.M.P.(MD) No.7791 of 2018

1.Jeyakumar @ Jebakumar
2.Jebaraj
3.Nanjilkumar
4.Alwin

... Petitioners

Vs.

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

...Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to CMP No.3567 of 2018 in C.C.No.510 of 2012 on the file of the Judicial Magistrate, Padmanabapuram, Kanyakumari District dated 13.08.2018 and set aside the same and consequently allow the application filed under Section 311 Cr.P.C.

For Petitioners: Mr.F.Deepak

For Respondent : Mr.K.Suyambulinga Bharathi

Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed against the dismissal of the application filed by the petitioners under Section 311 Cr.P.C., to re-call and cross examine P.W1 and P.W2.

2.The petitioners are facing trial before the Court below for the offence under Sections 341, 294(b), 323, 324 and 506 (ii) IPC. The prosecution examined P.W1 and P.W2 on 20.02.2017. On the said day, the learned counsel for the petitioners did not cross-examine P.W1 and P.W2. Thereafter, the petitioners filed a petition under Section 311 Cr.P.C., to re-call P.W1 and P.W2. The said petition came to be dismissed by the Court below by order dated 13.08.2018.

3.The learned counsel for the petitioners would submit that one more chance may be given to the petitioners to cross-examine P.W1 and P.W2, since the petitioners are facing serious charges before the Court below. The learned counsel would further submit that the petitioners will cross-examine all the witnesses on the



very same day when they are examined in chief.

4.The learned Government Advocate (Crl.Side) would submit that there are totally 9 witnesses, who are going to be examined by the prosecution and already four witnesses have been examined. The learned Government Advocate (Crl.Side) would further submit that Calendar Case is of the year 2012 and there is a delay on the part of the petitioners in filing the petition to re-call P.W1 and P.W2.

5.This Court has carefully considered the submissions made on either side.

6.The fact remains that the case is still in the stage of trial and only four witnesses have been examined till date. The petitioners are facing serious charges before the Court below and therefore, one final opportunity can be given to the petitioners to re-call and cross-examine P.W1 and P.W2.

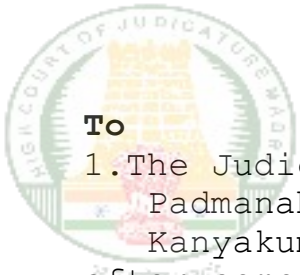
7.The Court below has dismissed the petition only on the ground that there was a delay in filing the petition by the petitioners. In view of the above, the order of the Court below in C.M.P.No.3567 of 2018 in C.C.No.510 of 2012 dated 13.08.2018 is hereby set aside. The Court below is directed to issue summons to P.W1 and P.W2. On the day, when P.W1 and P.W2 appear before the Court below, the petitioners have to cross examine those witnesses. If for any reason they fail to cross examine P.W1 and P.W2 on the day when they appear before the Court below, the petitioners shall forfeit their right to cross examine them thereafter. The petitioners together shall pay a sum of Rs.1,000/- towards cost to P.W1 and P.W2 on the day when they appear before the Court below. It is also made clear that the petitioners shall cross examine the other prosecution witnesses on the very same day they are examined in chief. The Court below is directed to complete the proceedings within a period of three months from the date of receipt of copy of this order and report compliance to the Registry immediately after completion of the proceedings.

8.This Criminal Original Petition is allowed with the above direction. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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To

1.The Judicial Magistrate,
Padmanabapuram,
Kanyakumari District.(to Report Compliance to the Registry
after completion of the Proceedings)

WEB COPY

2.The Sub Inspector of Police,
Thucklay Police Station,
Kanyakumari District.

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

+ 1 CC TO MR.F.DEEPAK, ADVOCATE IN SR NO.91819

MM

BU/KK/RP/SAR-III :22.11.2018 : 3P/5C

Cr1.O.P. (MD)No.17568 of 2018
25.10.2018