



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.10.2018
CORAM
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.18388 of 2018

WEB COPY

1.Habeeb Electro Homeopathy,
Medical College and Hospital,
represented by Mohammed habeeb Najjar

2.Mohammed Habeeb Najjar

... Petitioners

Vs.

The State represented by its
The Sub Inspector of Police,
Kottar Police Station,
Nagercoil,
Kanyakumari District.

...Respondent

Prayer: This Criminal Original Petition filed under Section 482 of Cr.P.C. to set aside the order made in Crl.M.P.No.139 of 2018 in C.C.No.171 of 2002 on the file of the Judicial Magistrate No.II, Nagercoil, dated 17.05.2018 and allow the petition seeking recall the witness namely P.W1 and P.W2.

For Petitioners : Mr.T.Selvakumaran
For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)

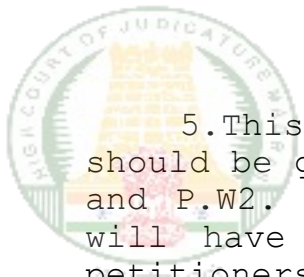
ORDER

This Criminal Original Petition has been filed challenging the order of the Court below dismissing the petition filed for recalling P.W1 and P.W2 and to cross examine.

2.The petitioners are A1 and A2, who are facing trial before the Court below for the offence under Sections 420 and 120 (b) IPC.

3.P.W1 and P.W2 were examined in chief on 23.10.2017 and they were not examined by the counsel representing the petitioners on the said day. Thereafter, the petitioner was filed a petition to recall P.W1 and P.W2 on 25.10.2017. However, the said petition has been dismissed by the Court below on the ground that the learned counsel for the petitioners ought to have cross examined P.W1 and P.W2 on the same day.

4.The learned Government Advocate (Crl.Side) would submit that there are totally 21 witnesses in this case and till now only two witnesses have been examined.



5.This Court is of the considered view that one more chance should be given to the petitioners to re-call and cross examine P.W1 and P.W2. The fact remains that there are several witnesses, who will have to be examined by the prosecution. That apart, the petitioners had filed the petition to recall within a period of two months from the date on which P.W1 and P.W2 were examined in chief before the Court below.

6.The order passed by the Court below in Cr1.M.P.No.139 of 2018 in C.C.No.171 of 2002 dated 17.05.2018 is hereby set aside. The Court below is directed to issue summon to the P.W1 and P.W2 and fix a date for their appearance. The petitioners shall cross examine P.W1 and P.W2 on the very same day when they appear before the Court below. For any reason, the petitioners do not cross examine P.W1 and P.W2 on the day when they appear before the Court, the petitioners will forfeit their rights to cross examine them thereafter. It is also made clear that the petitioners shall cross examine all the other witnesses on the very same day when they are examined in chief by the prosecution.

7.This Criminal Original Petition is allowed with a direction to the Court below, to complete the proceedings within a period of three months from the date of receipt of a copy of this order and report compliance to the Registry immediately after completion of the proceedings.

Sd/-

Assistant Registrar(Protocol)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The Sub Inspector of Police,
Kottar Police Station,
Nagercoil,
Kanyakumari District.

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

+1CC to Mr.T.Selvakumaran, Advocate, SR.No.90599

Cr1.O.P. (MD) No.18388 of 2018
12.10.2018

MM

ES/SKN/RSK/SAR 2/09.11.2018/2P/4C