

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.02.2019
CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.No.3169 of 2019

1.Pappa @ Sambu
2.Nallu @ Nallammal

... Petitioners/Accused 1 & 2

-Vs-

The State
Rep by Inspector of Police,
Kolathur Police Station,
Salem District.
(Crime No.180 of 2013)

... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 10.01.2019 made in Crl.M.P.No.3 of 2019 in S.C.No.94 of 2014 on the file of the Sessions Judge, Mahila Court, Salem.

For Petitioners: Mr.A.M.Esakkiappan
For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below in Criminal M.P.No.3 of 2019 in S.C.No.94 of 2014 on the file of the Sessions Judge, Mahila Court, Salem, thereby, dismissing the petition filed by the petitioner under section 311 of Cr.P.C to recall and cross examine PW1.

2. The learned counsel for the petitioner would submit that P.W.1 was cross examined on 31.03.2016. He further submitted that while cross examining P.W.1, the Civil Suit pending between the second petitioner and the de facto complainant was not brought to the knowledge of counsel to cross examine P.W.1. He further submitted that P.W.1 categorically denied that no Civil Suit is pending between the second petitioner/A2 and de facto complainant. He would further submit that admittedly a Civil Suit in O.S.No.234 of 2018 is pending on the file of District Munsif Court, Mettur. Therefore, further cross examination of P.W.1 is very much required in this case.

3. The learned Additional Public Prosecutor would submit that the occurrence took place on 06.04.2013. In this case, the learned Trial Judge has taken cognizance in S.C.No.94 of 2014 and P.W.1 was examined on 31.03.2016. After expiry of two years, in the fag end of the trial, the petitioner has filed

this petition to recall P.W.1, without saying specific reason for recalling P.W.1 and requested for dismissal of the petition.

4. It is seen that the petitioner is an accused and the Civil Suit between the second petitioner/A2 and the de facto complainant herein in O.S.No.274 of 2018 is pending on the file of the District Munsif Court, Mettur. It is also seen that in the cross examination P.W.1 categorically stated that no land dispute is pending between the de facto complainant and the second petitioner/A2.

5. Considering the facts and circumstances of the case, this Court is of the considered view that one last chance can be given to the petitioner to recall and cross examine P.W.1.

6. Accordingly, the order passed by the Court below in CrI.M.P.No.3 of 2019, dated 10.01.2019 is hereby set-aside. The petitioner shall be permitted to cross examine P.W.1 on the next hearing date of the case in S.C.No.94 of 2014 . If for any reason the petitioner fails to cross examine P.W.1 on the date, the petitioner shall forfeit his right to recall P.W.1 for cross examination in future. Failing which, the learned Magistrate is directed to proceed with the trial in accordance with law. The petitioner shall pay a cost of Rs.2,000/- to PW1 at the time when he comes for giving evidence. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

lpp/mpa

To

1.The Learned Sessions Judge,
Mahila Court, Salem.

2.The Inspector of Police,
Kolathur Police Station,
Salem District.

3.The Public Prosecutor,
High Court of Madras.

+lcc to Mr.A.M.Esakkiappan, Advocate, S.R.No.12046

CrI.O.P.No.3169 of 2019

SSD(CO)

rrs 06/03/2019