

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4650 of 2019

1.Seenuvaasan,

2.Ramar,

3.Kannabiran,

4.Kathirvel.

... Petitioners

Vs.

The State represented by the
Station House Officer,
Kadampuliyur Police Station,
Cuddalore District.
(Crime No.278 of 2013)

.... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.197 of 2015 on the file of the learned Judicial Magistrate No.II, Panruti, Cuddalore District and set aside the order dated 24.12.2018 dismissing the petition in Crl.M.P.No.2755 of 2018.

For Petitioner : Mr.K.Balasubramaniam

For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor.

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O R D E R

This Criminal Original Petition has been filed to set aside the order dated 24.12.2018 made in Crl.M.P.No.2755 of 2018 in C.C.No.197 of 2015 by the learned Judicial Magistrate No.II, Panruti, Cuddalore District.

2.The case of the prosecution is that the petitioners have trespassed into the agricultural field of the defacto complainant viz., Anbalagan and when the same was questioned, the petitioners attacked and threatened the defacto complainant. Hence, a complaint was lodged against the petitioners and the same was registered in Crime No.278 of 2013 for the offences under Section 294(b), 447, 506(ii) of IPC and a final report was filed in C.C.No.197 of 2015 and the learned Judicial Magistrate No.II, Panruti has taken cognizance and the trial was commenced. During the trial, the petitioner failed to cross examine the witnesses for the reason that the counsel for the petitioner was not well and could not appear before the Court. Therefore, the petitioners filed a petition before the Court below under Section 311 Cr.P.C to recall P.Ws.1 to 5 for cross examination in Cr.M.P.No.2755 of 2018 and the same was dismissed. Hence, the petitioner has filed the present petition with the aforesaid prayer.

3.The learned counsel for the petitioner submitted that there are totally eight witnesses and the prosecution have examined five witnesses and petitioner has not cross examined the witness for the reason that the counsel for the petitioner is absent on that particular day. Therefore, he filed a petition under Section 311 Cr.P.C., which was dismissed by the Court below and prays to set aside the order dated 24.12.2018.

4.The learned Additional Public Prosecutor submitted that a final report has been filed by the respondent Police before the Court below and the prosecution have examined five witnesses out of eight witnesses and the trial is posted for next hearing on 04.03.2019. He further submitted that the petitioner cannot raise any further compulsion to answer the question once it is denied.

5.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent and perused the materials placed before this Court.

6.On perusal of the impugned order, it is seen that the trial has been commenced as early as in the year 2016 and P.W.1 to P.W.5 were examined on 21.06.2016 and the petitioner failed to cross examine the witness on the same day, stating that the counsel for petitioner is not well. Thereafter, the petitioner had filed a petition under Section 311 Cr.P.C., in the year 2018, i.e., after lapse of two years. Therefore, the trial judge dismissed the petitioner as not maintainable stating that the petitioner has failed to follow the guidelines issued by the Hon'ble Apex Court in Vinothkumar case.

7. From the above, I do not find any infirmity or illegality in the order passed by the learned Judicial Magistrate No.II, Panruti. Therefore, this Court is not inclined to interfere with the order passed by the Court below. Accordingly, the Criminal Original Petition is dismissed.

rm

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Station House Officer,
Kadampuliyur Police Station,
Cuddalore District.
(Crime No.278 of 2013)
2. The Public Prosecutor,
High Court, Madras.
3. The Judicial Magistrate,
Cuddalore District.

+1cc to Mr.K.Balasubramaniam , Advocate, S.R.No.15881

LN(CO)
KAK(01/03/2019)

सत्यमेव जयते Cr1.O.P.No.4650 of 2019

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