

the petition in consonance with the mandate of decision of Hon'ble Apex Court reported in AIR 2015 SC 1206 (Vinothkumar Vs.State of Punjab).

3. The learned counsel for the petitioners would submit that there are totally 18 witnesses in this case and though the case is of the year 2010, PW.1 in this case was examined on 02.03.2016 and the other witnesses were examined belatedly. He would further submit that the petitioners have cross examined all the other witnesses and since the petitioners were handicapped, due to non availability of certain documents, the petitioners were unable to cross examine PW.7 on 10.01.2019 and thereby, a petition had been filed to defer cross examination. However, the trial Court had dismissed the petition and thereby, the petitioners immediately on the next hearing date on 22.01.2019 had filed a petition to recall the witnesses. He would further submit that it is not a case where the evidence has been closed. He would further submit that the Trial is going on and that there are about eight witnesses yet to be examined and that by recalling the witness PW.7, no prejudice will be caused to the respondent. He would further submit that the petitioners at no point of time was responsible for delay in the progress of trial and that the petitioners had taken every steps to cross examine all the other witnesses on their same day of the examination in chief. He would further submit that PW.7 is an official witness who is also available in the local area at Dharmapuri District.

4. The learned Additional Public Prosecutor would submit that the petitioner had been showing a lethargic attitude at every stage of trial and most of the witnesses have been recalled and cross examined after much delay. He would further submit that the case stands posted on 26.04.2019 for further examination of PW.8 and that there are other witnesses yet to be examined.

5. At this juncture, the learned counsel for the petitioners would submit that the petitioners undertake that they will cross examine PW.7 and the other witnesses on the same day of their examination in chief and would co-operate with the trial Court for progress of trial and would pray that the petition to recall PW.7 may be allowed on imposition of terms and costs.

6. The trial Court has dismissed the petition following the mandate of the decision of the Hon'ble Apex Court reported in AIR 2015 SC 1206 (Vinothkumar Vs.State of Punjab).

7. I do not any infirmity in the order passed by the learned Trial Judge. The learned Trial Judge had rightly

dismissed the petition following the mandate of the decision cited above. However, this Court is of the opinion that in the expedient interest of justice, the petitioners shall be given an opportunity to recall and cross examine the witness PW.7 on imposition of costs and terms.

8. In order to give one more opportunity to the petitioner, the Trial Court is directed to fix a date and recall PW.7 for his appearance on the following conditions.

(i) the petitioners shall pay cost of Rs.2,000/- out of which an amount of Rs.1,000/- shall be paid to the witness PW.7 and an amount of Rs.1,000/- shall be paid by the petitioners to the District Legal Services Authority, Dharmapuri District and the receipt shall be furnished before the trial Court.

(ii) The petitioners are directed to file affidavit of undertaking before the Trial Court that they will cross examine PW.7 and the other witnesses on the dates when they are examined in chief before the trial Court without fail.

9. With the above observations, the Criminal Original Petition stands disposed of.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate, Dharmapuri.
2. The Secretary District Legal Services Authority, Dharmapuri District.
3. The Deputy Superintendent of Police, Vigilance and Anti Corruption, Dharmapuri.
4. The Public Prosecutor, High Court of Madras.

+1cc to Mr. Anbalagan, Advocate, S.R.No. 40173

Crl.O.P.No.11027 of 2019

VBA(CO)
GN(27/05/2019)