

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.15505 of 2019
and
Crl.M.P.Nos.7671 and 7673 of 2019

1. Senthilselvi
2. Venkatachalam

...Petitioners

Vs.

The State, rep. by
The Inspector of Police,
District Crime Branch
Erode.
(Crime No.11 of 2015)

....Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 25.02.2019 made in Crl.R.C.No.47 of 2018 on the file of the II Additional Sessions Judge, Erode confirming the order dated 12.11.2018 in C.M.P.No. 3108 of 2018 in C.C.No.38 of 2015 on the file of the Chief Judicial Magistrate, Erode (now transferred to learned Judicial Magistrate No.II, Erode) and renumbered as C.C.No.614 of 2019).

For Petitioner : Mr. M.Guruprasad

For Respondent : Mr.M. Mohamed Riyaz

Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the II Additional Sessions Court, Erode in Crl.R.C No.47 of 2018 confirming the order passed by the trial Court in dismissing the application filed under Section 311 of Cr.P.C to recall PW2 for further cross examination.

2. The petitioners are facing trial before the Court below for the offences under Sections 406, 420, 421 r/w 109 IPC. The petitioners are ranked as A1 and A2. The prosecution had examined PW1 to PW6 and all these witnesses were cross examined.

PW2 was examined in chief on 23.08.2016 and the said witness was cross examined by the petitioners on 26.10.2016.

3. The examination of the witnesses on the side of the prosecution was completed in the year 2017 and the petitioners were also questioned under Section 313 of Cr.P.C on 07.11.2017. Thereafter, the petitioners filed C.M.P.No.2660 of 2017 to recall PW5 for further cross examination. This petition was allowed and PW5 was cross examined on 11.11.2018. Thereafter, the petitioners filed C.M.P No.311 of 2018 on 31.01.2018 to recall PW1. This petition was also allowed and PW1 was recalled and further cross examined on 21.03.2018. The case was thereafter posted for defence witnesses. At that point of time, the petitioners filed a petition to recall PW6 for further cross examination and the same was also allowed. PW6 was further cross examined on 11.06.2018.

4. When the case came up for hearing on 25.06.2018, it was represented that there was no defence witnesses and the case was adjourned to 04.07.2018 for final arguments. At that point of time, the petitioners filed an application on 06.09.2018 to recall PW2 for further cross examination.

5. The Court below dismissed the petition after giving a specific finding that several opportunities were given to the petitioners to cross examine the witnesses and the petitioners were filing one petition after another to recall witnesses and thereby, they were dragging on the proceedings. The Court below deemed it fit to dismiss the application and the same was also confirmed in the criminal revision.

6. The learned counsel for the petitioner submitted that one last opportunity can be given to the petitioners to recall PW2 for further cross examination. The learned counsel further submitted that the further cross examination is required since there are some aspects which have come out after the other witnesses were recalled and cross examined.

7. The learned Additional Public Prosecutor appearing on behalf of the respondent submitted that the petitioners cannot be allowed to recall witnesses as per their own will and pleasure and the Court below has given sufficient reasons for dismissing the petition and there is absolutely no ground to interfere with the same.

8. The attitude of the petitioner in recalling every witness at different point of time is apparent from the facts narrated above. If the petitioners wanted to recall witnesses

for further cross examination, they could have filed one consolidated application to recall the witnesses and it is unfair to file independent application at different point of time and indulge in the practice of recalling every witness in the guise of further cross examination.

9. This Court does not find any illegality or infirmity in the orders passed by the Court below and there are absolutely no grounds to interfere with the same.

10. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in C.C.No.38 of 2015 within a period of three months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Sessions Judge,
Erode.
2. The Inspector of Police,
District Crime Branch,
Erode.
3. The Public Prosecutor,
High Court of Madras,
Madras.

+1cc to Mr. M.Guruprasad, Advocate sr.49532

CRL.O.P.No.15505 of 2019
and

CrI.M.P.Nos.7671 and 7673 of 2019

ppa(co)
nr 26/07/2019