

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.07.2019

CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.19389 of 2019
and Crl.M.P No.9922 of 2019

1. Dr.R.Krishnamurthy

2. Dr.R.Lakshmipathy

Petitioners

vs.

Muthamizh Mudhalvan

Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crl.M.P.No.4677 of 2019 in C.C.No.273 of 2006 and may set aside the order dated 18.07.2019 passed in Crl.M.P.No.4677 of 2019 in C.C.No.273 of 2006 pending on the file of Judicial Magistrate I, Krishnagiri.

For Petitioners: Mr.I.Subramaniam
Senior Counsel for
M/s.S.Elambharathi

For Respondent : Mr.R.Ganesh Kumar

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioners to recall PW1 to PW7 for cross-examination.

2. The petitioners are facing trial before the Court below for an offence under Section 500 of IPC. This Court by an order dated 14.06.2019 while recalling the non-bailable warrant issued against the petitioners, gave the following directions:

5.The order passed by the Court below dated 10.06.2019 is modified to the effect that the Non-bailable warrant issued against the petitioners is re-called and they shall be represented by a counsel before the Court below. The learned counsel representing the petitioner shall cross examine the witnesses on the same day they are examined in chief and shall not take any adjournments and further delay of the case. Even at the time of questioning under Section 313 of

Cr.P.C., the same can be done without the physical presence of the petitioners in accordance with the guidelines given by the Hon'ble Supreme Court in *Keya Mukherjee v. Magma Leasing Limited and Another* reported in 2008 2 MLJ (Crl) 654. The Court below shall complete the proceedings in C.C.No.273 of 2006 within a period of two months from the date of receipt of the copy of this order. The petitioners shall appear before the Court below at the time of final judgment.

3. Pursuant to the directions given by this Court, the witnesses were examined on the side of the respondent. PW1 was partly cross-examined by the petitioners and PW2 to PW7 were not cross-examined by the petitioners. PW8 who was examined-in-chief on the side of the respondent was cross-examined by the petitioners. Therefore, the petitioners filed an application before the Court below to recall PW1 to PW7 for cross-examination. This petition was dismissed by the Court below on the ground that the petitioners ought to have cross-examined the witnesses on the same day and the petitioners have been dragging on the proceedings for nearly thirteen years.

4. Mr.I.Subramaniam, the learned Senior Counsel appearing on behalf of the petitioners submitted that the petitioners do not intend to drag on the proceedings. The learned Senior Counsel submitted that , a date can be fixed for the appearance of the witnesses and on that day they will be cross-examined and the cross-examination will be completed on the same day. The learned Senior Counsel submitted that even time limit can be fixed for the completion of the proceedings.

5. The learned counsel for the respondent submitted that the petitioners have dragged on the proceedings for more than thirteen years. The learned counsel submitted that the witnesses were examined on the side of the respondent and at that point of time, the counsel representing the petitioners were very much present in Court and the witnesses ought to have been cross-examined on the same day. However, they were not cross-examined and the evidence was closed. The learned counsel further submitted that the case has already been sufficiently dragged by the petitioners and by resorting to this tactics, this case will be dragged on for some more time. Therefore, this Court should not interfere with the order passed by the Court below and there are no grounds to interfere with the same.

6. This Court has carefully considered the submissions made on either side and also the materials available on record.

7. Taking into consideration the facts and circumstances of the case, this Court is inclined to give one last chance to the

petitioners to cross-examine the witnesses namely PW1 to PW7.

8. The order passed by the Court below in Crl.M.P. No.4677 of 2019, dated 18.07.2019 is hereby set aside. The Court below is directed to post this case on 29.07.2019, for the cross-examination of PW1 to PW3. The respondent shall ensure that, these three witnesses are present before the Court on that day. On the same day, all these three witnesses must be cross-examined and the cross-examination must be completed on the same day. Thereafter, considering the convenience of the witnesses, date can be fixed for the examination of rest of the four witnesses (two witnesses one day and balance two witnesses on another day). On the day fixed by the Court below, these witnesses must be cross-examined by the petitioners and it should be completed on the same day.

9. It is made clear that if the petitioners fail to cross-examine any of the witnesses who are present before the Court, the petitioners will forfeit their right to recall those witnesses in future.

10. This Criminal Original Petition is disposed of with the direction to the Court below to complete the proceedings within the time stipulated by this Court in Crl.O.P.No.15180 of 2019. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssr

To

The Judicial Magistrate I,
Krishnagiri.

+1cc to Mr.R.Ganesh Kumar, Advocate, S.R.No.62925
+1cc to M/s.S.Elam Bharathi, Advocate, S.R.No.62666

Crl.O.P. No.19389 of 2019
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RK(CO)

RRS (25/07/2019)