

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.22084 of 2019

1.L.Naghabushnam
2.Tirupurasundari

... Petitioners/
Accused Nos.3 & 2

Vs.

State Rep by,
The Inspector of Police,
Central Crime Branch,
Chennai.

... Respondent/
Complainant

Prayer:

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order passed in CrI.M.P.No.383 of 2019 in C.C.No.38 of 2018 dated 03.04.2019 on the file of learned CCB & CBCID Metropolitan Magistrate, Egmore and allowing the direction petition.

For Petitioners : Mr.Ali Hassan Khan

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

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 of Cr.P.C. to recall P.W.1 to P.W.13 for cross examination.

2.The petitioners are facing trial before the Court below for an offence under Sections 420, 465, 467, 468 and 471 r/w 120 (B) IPC.

3.The prosecution had examined 13 witnesses, Pw1 was examined on 23.03.2009, Pw2 was examined on 15.10.2009, Pw3 was examined on 28.02.2009, Pw4 was examined on 05.07.2012, Pw5 was examined on 25.03.2011, Pw6 was examined on 05.07.2012, Pw7 was examined on 24.02.2014, Pw8 was examined on 28.01.2013, Pw9 was

examined on 28.02.2013, Pw10 was examined on 28.01.2013, Pw11 was examined on 24.12.2014, Pw12 was examined on 29.09.2014 and Pw13 was examined on 05.11.2014. None of these witnesses were cross examined by the petitioners.

4.It is also seen from records that the petitioners already filed an application under Section 311 of Cr.P.C. to recall the witnesses and the same was allowed by the Court below in the year 2014. In spite of the same, no steps were taken to recall any witnesses for nearly 2 years. Left with no other option the Court below closed the evidence in the year 2018. Thereafter the accused persons were also questioned under Section 313 of Cr.P.C on 08.1.2019. When the case was at the stage of arguments on the side of the defence, the present application came to be filed before the Court below seeking to recall all the witnesses for cross examination.

5.The Court below after considering the facts and circumstances of the case dismissed the application on the ground that the petitioners did not take any steps to recall any of the witnesses and had successfully dragged on the proceedings from the year 2009 onwards. The Court below found that there are absolutely no merits on the side of the petitioners. More particularly due to the fact that the earlier application filed under Section 311 of Cr.P.C. was allowed and in spite of the same the witnesses were never recalled for nearly 2 years.

6.The learned Counsel for the petitioners submitted that the case was taken care by one Vijayakumar, who is the husband of the 2nd petitioner and he died during the pendency of the proceedings and therefore the petitioners were not in a position to know the status of the case. The learned Counsel further submitted that one last opportunity can be given to the petitioners to recall the witnesses for cross examination.

7.The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the petitioners did not cross examine even a single witness for nearly 10 years and therefore the Court below was right in dismissing the application filed by the petitioners and there are absolutely no grounds to interfere with the said order.

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

9.This Court does not find any illegality or infirmity in the order passed by the Court below and the reasons given by the Court below is perfectly in accordance with law and there are no grounds to interfere with the same. The petitioners have taken the trial in a very casual manner and now they are trying to

throw the blame on the counsel. There are absolutely no merits in this case.

10. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings within a period of two months from the date of receipt of copy of this order.

Sd/-
Deputy Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

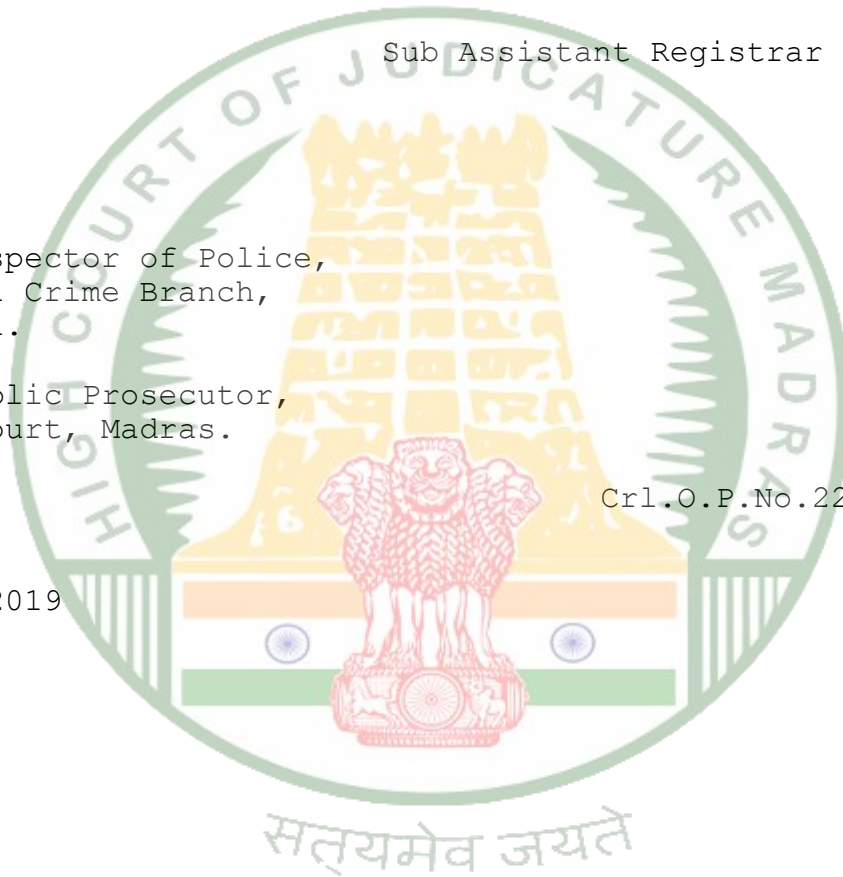
jas/vs

To

1. The Inspector of Police,
Central Crime Branch,
Chennai.
2. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.22084 of 2019

CA (CO)
CS/25/09/2019



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