

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

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THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.25653 of 2019

1.Vinoth
2.Ranjith Kannan
3.Neelamegam
4.Sekar
5.Kalaivani
6.Oviyaraj

...Petitioners/Accused

Versus

The State rep. by,
The Inspector of Police,
Needamangalam Police Station,
Tiruvarur District.
(Crime No.6 of 2017)

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed on 02.08.2019 in Crl.M.P.No.599 of 2019 in S.C.No.104 of 2017 on the file of the Principal District and Sessions Court, Tiruvarur.

For Petitioner :M/s.K.M.Subramanian

For Respondent :M/s.M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order dated 02.08.2019 in Crl.M.P.No.599 of 2019 in S.C.No.104 of 2017 passed by the learned Principal District and Sessions Judge, Tiruvarur.

2.The learned counsel for the petitioner has submitted that the petitioners are facing trial in S.C.No.104 of 2017 for the offence under Section 302 of IPC. He further submitted that after closing the prosecution side evidence, the accused were questioned under Section 313 of Cr.P.C., and thereafter, the case was posted for examination of the evidence on the side of the accused. At that time, the petitioners/accused have filed a memo mentioning the list of witnesses, but since the learned Public Prosecutor has opposed the said memo, the petitioners

have filed a petition in CrI.M.P.No.599 of 2019, seeking permission of the trial Court to examine the witnesses mentioned in the memo as defence witnesses. He further submitted that the learned Principal District and Sessions Judge, Thiruvavarur without assigning any reasons, allowed the petition partly, permitting the petitioners to examine the witness Nos.3,6,7,13 & 14 alone and in respect of the other witnesses, the learned Principal District and Sessions Judge, Thiruvavarur has dismissed the said petition.

3.He further submitted that since the witnesses mentioned in the list are material witnesses, the learned Principal District and Sessions Judge, Thiruvavarur ought to have permitted the petitioners to examine all the witnesses and hence he prayed to set aside the order passed by the learned Principal District and Sessions Judge, Thiruvavarur in respect of declining the relief to examine other witnesses.

4. Per contra, the learned Additional Public Prosecutor appearing for the respondent has submitted that the petitioners have cited as many as 15 witnesses and all the witnesses are not material witnesses and taking into consideration the aforesaid facts, the learned Principal District and Sessions Judge, Thiruvavarur, has partly allowed the petition and in the said order this Court need not interfere.

5.In CrI.M.P.No.599 of 2019 in S.C.No.104 of 2017, the petitioners have stated that at the time of occurrence, the petitioners 1 to 3 (Accused Nos.1 to 3) also sustained injuries and they took treatment at Government Hospital, Needamangalam before remand. They also stated that after remand, the 3rd petitioner/3rd accused took treatment for his teeth in the Central Jail, Trichy and after coming out on bail, he took treatment at Nathan Dental Hospital, Mannargudi. They also stated that at the time of occurrence one Ravi (Witness No.13), Special Sub Inspector Police, Needamangalam Police Station came and rescued the accused Nos.1 to 3. Taking into consideration of the aforesaid facts, the learned Principal District and Sessions Judge, Thiruvavarur has passed an order permitting the petitioners to examine one of the medical officers, who gave treatment to the accused persons viz., Witness No.14 (Assistant Medical Officer attached to the Government Hospital, Needamangalam) and also permitted the petitioners to examine the said Ravi (Witness No.13), Special Sub Inspector of Police, Needamangalam Police Station.

6. This Court is of the view that since the petitioners pleaded that they took treatment before three doctors, it is sufficient to examine one of the doctors namely Witness No.14. The examination of Witness No.14 will serve the purpose.

Therefore, the other two medical officer need not be examined. Insofar as the Witness No.1 to 11 are concerned, the Witness Nos.1 and 2 are admittedly accused Nos.5 and 2 respectively. As per Section 315 of Cr.P.C, the accused is a competent witness for the defence, but he shall not be called as a witness except on his own request in writing. It appears in this case, the aforesaid accused persons (Witness Nos.1 and 2) have not filed any application under Section 315(1)(a) of Cr.P.C, seeking permission of the Court to permit them to give evidence on oath in disproof of the charges made against them. Further, in this case, it is seen from the order passed by the learned Principal District and Sessions Judge, Thiruvavarur that during enquiry, based on the memo filed by the learned counsel for the petitioners, the names of the Witness Nos.1 and 2 were deleted.

7.The other Witness Nos.3 to 11 are concerned according to the petitioners they are the eye witnesses. As per Section 134 of Indian Evidence Act, 1872, no particular number of witnesses shall in any case be required for the proof of any fact. Therefore all the aforesaid witnesses need not be examined.

8.As per Section 233(3) of Cr.P.C, if the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. In this case as already pointed out that the petitioners want to examine as many as 11 witnesses as eye witnesses. If the petitioners are permitted to examine all those witnesses that would delay the proceedings before the trial Court. Therefore, this Court is of the view that the petitioners can be permitted to examine two or three witnesses with regard to occurrence. Instead of selecting the witnesses by the Court, choice can be given to the petitioners themselves to choose which are the persons have to be examined as eye witnesses before the trial Court.

9.For the aforesaid reasons, the order dated 02.08.2019 in CrI.M.P.No.599 of 2019 in S.C.No.104 of 2017 passed by the learned Principal District and Sessions Judge, Thiruvavarur is modified to the effect that with regard to the witness Nos.1 to 11 are concerned (Eye Witness), a liberty is given to the petitioners/accused to choose two or three persons as witnesses and examine them on the same day before the trial Court. In case the petitioners choose to examine witness Nos.1 and 2 (Accused Nos.5 and 2), they have to necessarily file an application under Section 315(1)(a) of Cr.P.C, expressing their willingness in writing. Only thereafter, they will be permitted

to examine as defence witnesses. Insofar as witness Nos.12 to 15 are concerned, this Court is of the view that the examination of witness Nos.13 and 14 would serve purpose, other witnesses need not be examined.

10.With the aforesaid observations, this Criminal Original Petition is disposed of.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

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To

1. The Principal District and Sessions Court,
Thiruvarur.
2. The Inspector of Police,
Needamangalam Police Station,
Tiruvarur District.
3. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.25653 of 2019

CA(CO)
SP(03/02/2020)

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