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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CrI.O.P.No. 31806 of 2019

1.Karuppaiah  
2.Palanichamy

...Petitioners

-Vs-

The Inspector of Police  
All Women Police Station  
Udumalpet, Tiruppur District.

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 15.02.2019 in C.R.P.No.8/2017 on the file of the III Additional District and Sessions Judge, Tiruppur at Dharapuram, confirming the order dated 02.12.2016 in CrI.M.P.No.3446/2016 in C.C.No.288/2008 on the file of the Judicial Magistrate No.I, Udumalpet further direct to the Judicial Magistrate No.I, Udumalpet to recall PW2 to PW8 for cross examination by the petitioners.

For Petitioners : Mrs.V.V.Sathya

For respondent : Mr.M.Mohamed Riyaz  
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order dated 15.02.2019, in C.R.P.No.8/2017, on the file of the III Additional District and Sessions Judge, Tiruppur at Dharapuram, confirming the order dated 02.12.2016 in CrI.M.P.No.3446/2016 in C.C.No.288/2008 on the file of the Judicial Magistrate No.I, Udumalpet and further to direct the Judicial Magistrate No.I, Udumalpet to recall PW2 to PW8 for cross examination by the petitioners.

2. The respondent herein had filed a charge sheet, alleging that the petitioners herein and one Meenakshi have committed the offences punishable under Sections 498- A of IPC, under Section 4 of Dowry Prohibition Act, 1961, and 498-A r/w 109 IPC and under Section 4 of Dowry Prohibition Act r/w 109 IPC. Based on the said charge sheet, the learned Judicial Magistrate No.I,



Udumalpet has taken the case on file in C.C.No.288 of 2008 and tried the case and by the judgment dated 10.09.2012 has convicted the accused Nos.1 and 2 and passed sentences and acquitted the third accused namely, Meenakshi. As against the same, the accused Nos.1 and 2 have preferred an appeal in C.A.No.18 of 2012, on the file of the Principal Sessions Judge, Tiruppur. The learned Principal Sessions Judge, Tiruppur by the judgment dated 07.12.2012 had set aside the judgment and decree passed by the trial Court and remanded the matter with a direction that the trial Court has to recall PW1 and to give an opportunity to the accused Nos.1 and 2 to cross examine the said witness and thereafter, dispose the case in accordance with law.

3. Accordingly, the trial Court has restored the aforesaid case on file and recalled PW1 and gave an opportunity to the accused Nos.1 and 2 to cross examine the said witness. The accused Nos.1 and 2 also cross examined the said witness. Thereafter, they have filed an application under Section 311 of Cr.P.C to recall PWs 2 to 8 for cross examination. The trial Court has dismissed the said petition as against which, the accused Nos.1 and 2 had filed CRP.No.8 of 2017, on the file of the III Additional District and Sessions Judge, Tiruppur. The learned III Additional District and Sessions Judge, Tiruppur by the order dated 15.02.2019 has dismissed the said Civil Revision Petition and thereby, confirmed the order passed by the trial Court in Crl.M.P.No.3446 of 2016. Aggrieved by the same, the accused Nos.1 and 2 have filed the present petition.

4. The learned counsel for the petitioners has submitted that after cross examination of PW1, it has become necessary for the petitioners to contradict the other witnesses and hence, PWs 2 to 8 have to be recalled for further cross examination.

5. The learned Additional Public Prosecutor has submitted that since the Appellate Court has remanded the matter only for the purpose of cross examining PW1, it is not open to the petitioners to file a petition to recall PWs 2 to 8 and hence, he strongly opposed this petition.

6. Admittedly, the Appellate Court has remanded the matter only for the purpose of cross examination of PW1 and that being so, it is not open to the petitioners to file a petition to recall PWs 2 to 8. Taking into consideration of the aforesaid facts, the trial Court has rightly dismissed the petition filed by the petitioners and the learned III Additional District and Sessions Judge, also has dismissed the Civil Revision Petition. This Court does not find any infirmity in the order passed by the Courts below and hence, this Petition has to be dismissed.



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7. Accordingly, this Criminal Original Petition is dismissed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1.The Inspector of Police  
All Women Police Station  
Udumalpet, Tiruppur District.

2.The Public Prosecutor,  
High Court, Madras.

3. The III Additional District and Sessions Judge  
Tiruppur.

4. The Judicial Magistrate No.I  
Udumalpet

+1 CC to Mr.M.V. Venkatesan, Advocate sr 101588.

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PVS (CO)  
SP(02/01/2020)