

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.31645 of 2019

1.Ramakrishnan
2.Aruldass
3.IrudhayaRaj

...Petitioners/Accused 1 to 3

-Vs-

The Deputy Superintendent of Police
Central Railway Police Station
Chennai.
(Crime No.135/2017)

... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.10606 of 2019 dated 06.11.2019 in C.C.No.3521/2017 on the file of the XVI Metropolitan Magistrate, G.T. Chennai.

For Petitioners : Mr.K.Thenrajan
For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order passed in Crl.M.P.No.10606 of 2019 dated 06.11.2019 in C.C.No.3521/2017 on the file of the XVI Metropolitan Magistrate, G.T. Chennai.

2. The learned counsel for the petitioners has submitted that the petitioners are facing trial for the alleged offences under Sections 341, 342, 392 r/w 34 IPC. He further submitted that on 31.01.2019 PW1 was examined in chief and on 26.02.2019 PWs 5 to 7 were examined in chief. He further submitted that since on those days, the counsel who was appearing for the petitioners went to his native place, the petitioners could not cross examine the aforesaid witnesses and hence, they have filed a petition under Section 311 Cr.P.C. in Crl.O.P.No.9058 of 2019 to recall the aforesaid witnesses for cross examination and the said petition was allowed directing the petitioners to deposit a

sum of Rs.700/- towards witness batta on 28.08.2019. He further submitted that in pursuance of the said order, PWs 1 and 7 appeared before the trial Court on 12.09.2019 but due to no instruction on the part of the petitioners, their counsel could not cross examine the said witnesses and witness batta was also not paid.

3. He further submitted that subsequently, the petitioners have filed another petition under Section 311 Cr.P.C. in CrI.M.P.No.10606 of 2019 to recall PWs 1, 5, 6 and 7 for cross examination, but the learned XVI Metropolitan Magistrate, without giving an opportunity to the petitioners to cross examine the aforesaid witnesses has dismissed the said application and therefore, he prayed to grant one more opportunity to the petitioners to cross examine the aforesaid witnesses.

4. Per contra, the learned Additional Public Prosecutor has submitted that PW1 belongs to the State of Orissa and when he was examined before the trial Court on 31.01.2019, he was not cross examined by the petitioners. Subsequently, PWs 5 to 7 were examined in chief on 26.02.2019. On that date also, the petitioners have not cross examined the said witnesses. He further submitted that subsequently, the petitioners have filed CrI.M.P.No.9058 of 2019 to recall the aforesaid witnesses for cross examination and the trial Court also with a view to give an opportunity to the petitioners to cross examine the said witnesses has allowed the said application directing the petitioners to deposit a sum of Rs.700/- on 28.08.2019 towards witness batta but the petitioners have not deposited the said amount. Eventhough the prosecution has produced PWs 1 and 7 on 12.09.2019, the petitioners have not cross examined the said witnesses on that date also. He further submitted that subsequently, the petitioners have filed CrI.M.P.No.10606 of 2019 to recall all the aforesaid witnesses and the trial Court taking into consideration of conduct of the petitioners has rightly dismissed the said petition and therefore, he requested to dismiss the petition.

5. Admittedly, PW1 is a native of Orissa and he was produced before the trial Court on 31.01.2019 and on that date he was examined in chief. The petitioners have not cross examined the said witness on that date. Subsequently, on 26.02.2019 PWs 5 to 7 were examined in chief. On that date also, the petitioners did not cross examine the said witnesses. Subsequently, the petitioners have filed CrI.M.P.No.9058 of 2019 to recall PWs 1, 5 to 7 for cross examination. The learned XVI Metropolitan Magistrate, with a view to give an opportunity to the

petitioners has allowed the said application on condition that the petitioners have to deposit a sum of Rs.700/- towards witness batta on or before 28.08.2019. In pursuance of the said order, the prosecution has produced PWs 1 and 7 before the trial Court on 12.09.2019 and on that date also, the petitioners have not cross examined the said witnesses. Further the amount of Rs.700/- towards witness batta was also not paid as per the order of the trial Court and hence, the said witnesses were sent back. After waiting for two months, the petitioners have filed another petition under Section 311 Cr.P.C. in CrI.M.P.No.10606 of 2019 to recall PWs 1, 5 to 7. Taking into consideration, the conduct of the petitioners, the trial Court has dismissed the petition.

6. In spite of the opportunities given to the petitioners twice, they did not choose to cross examine PWs 1 and 7. Further PW1 is a native of Orissa and he was already summoned to appear before the trial Court twice but the petitioners have not cross examined the said witnesses. Hence, this Court is not inclined to allow this petition with regard to PWs 1 and 7 are concerned. So far as PWs 5 and 6 are concerned, they have not appeared before the trial Court as per the order passed by the trial Court in CrI.M.P.No.9058 of 2019. Hence, in order to give an opportunity to the petitioners to cross examine PWs 5 and 6 this Court is inclined to allow this petition partly.

7. In the result, this petition is partly allowed. The order passed in CrI.M.P.No.10606 of 2019 on the file of the XVI Metropolitan Magistrate, GT, Chennai, is confirmed with regard to PWs 1 and 7 are concerned. With regard to PWs 5 and 6 are concerned the said order is set aside. The trial Court is directed to give an opportunity to the petitioners to cross examine PWs 5 and 6. The Petitioners are directed to cross examine PWs 5 and 6 on their appearance before the trial Court without seeking any adjournment.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The XVI Metropolitan Magistrate,
G.T, Chennai.

2.The Deputy Superintendent of Police
Central Railway Police Station
Chennai.
(Crime No.135/2017)

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Thenrajan, Advocate sr.163056(11.12.2019)

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