

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.02.2019

CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.30429 of 2018
and
CRL.M.P.No.17925 of 2018

1.Haji Mohammad
2.M.Rukkin Basha
3.Mansoor Ali Khan
4.Marjit Ali Khan

...Petitioners

Vs.

The State rep. by
The Inspector of Police
Koradacheri Police Station
Tiruvarur District.

...Respondent

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the order passed in Crl.M.P.No.2190 of 2018 in S.C.No.52 of 2017 dated 10.12.2018 on the file of the learned Principal District and Sessions Judge, Tiruvarur and to allow the petitioners / accused to produce their defense witnesses as per the witness list filed thereon.

For Petitioners : Mr.K.M.Subrahmanian

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

O R D E R

This Criminal Original Petition has been filed under Section 482 of Cr.P.C, to set aside the order passed in Crl.M.P.No.2190 of 2018 in S.C.No.52 of 2017 dated 10.12.2018 on the file of the learned Principal District and Sessions Judge, Tiruvarur and to allow the petitioners / accused to produce their defense witnesses as per the witness list filed.

2.The learned counsel for the petitioners would submit that the Crime No.153 of 2013 has been registered against the petitioners under Section 302 of IPC. The petitioners filed a petition under Section 233(3) of Criminal Procedure Code praying to issue summons to seven witnesses listed in the petition and the same was dismissed by the Trial Court on 10.12.2018. Aggrieved by the said dismissal order, the petitioners are before this Court.

3.The learned counsel would further submit that the witnesses on the side of the prosecution has been completed only on 03.12.2018 and the petitioners were examined under Section 313 of Cr.P.C. in respect of incriminating circumstances of the prosecution witnesses. Accordingly, the petitioners answered the questions under Section 313 of Cr.P.C. and they have also submitted a written version of their explanations regarding their innocence. The petitioners submitted a witness list on 07.12.2018 and immediately on the next date of hearing following the 313 of Cr.P.C. examination conducted by the trial Court.

4.The learned counsel would further submit that the witness list of the defence side in respect of 9 witnesses were furnished and their evidentiary value is more important to prove the innocence of the petitioners in respect of the alleged crime. Unfortunately the Trial Court without even looking into the names furnished by the defence side and their evidence simply dismissed the petition in Crl.M.P.No.2190 of 2018 on 10.12.2018 for the reasons that the petitioners have already filed a recall petition to recall the prosecution witness for cross examination on two occasions.

5.The learned counsel further submitted that the witnesses stated in the petition are the essential witnesses to disprove the case of the prosecution. Therefore, praying to set aside the order passed by the learned Principal District and Sessions Court and the petitioners may be permitted to examine the names of the persons mentioned in the list of the witnesses of the defence.

6.The learned Additional Public Prosecutor would submit that on 14.07.2017 PW1 was examined and this is a case under Section 302 and other provisions of IPC. Thereafter, the petitioners filed a petition under Section 91 of Cr.P.C. to produce the General Diary from 11.05.2013 to 11.05.2014 was filed vide Crl.M.P.No.584 of 2018 and the same was dismissed on 10.08.2018. Again the petitioners filed a petition to recall PW15 i.e. the Investigation Officer and that petition was allowed in Crl.M.P.No.1276 of 2018. Thereafter, another petition was filed to recall PW2 and PW11 and that petition was dismissed on the ground that the petitioners are kept on filing petitions one after other only to protract the proceedings. The additional public prosecutor would further submit that the list of the witnesses submitted by the petitioners have nothing to do with the occurrence and they are the unnecessary witnesses, therefore, the Trial court has rightly dismissed the petition and the same need not warrant any interference with the said order. Therefore, praying for dismissal.

7. Heard the learned counsel appearing for the petitioners as well as the learned additional public prosecutor.

8. This is a case under Section 302 and other provisions of IPC. The petitioners are the accused persons who were examined under Section 313 of Cr.P.C. in respect of incriminating circumstances of the prosecution witnesses. The petitioners have filed their written version and also furnished the list of witnesses to be examined on their side. The said petition in respect of the persons mentioned in the witnesses list are for the purpose of disproving the case of the prosecution in which the Trial Court considered only the 5th witness Mr. Kabeer Ahammed to be examined as defence witness. The reasons stated by the Trial court is not tenable to reject the request made by the defence side under Section 233(3) of Cr.P.C. The said provision under Section 233(3) is extracted hereunder:

"233(3). 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".

9. The petitioners submitted the witness list on 07.12.2018, immediately on the next date of hearing following the 313 Cr.P.C. Immediately thereafter the petitioners submitted the list of witnesses to be examined on their side. Hence there is no question for the delay in this matter to refuse the request of the petitioners.

10. Considering the above facts and circumstances, this Court is inclined to interfere with the order passed by the learned Principal District and Sessions Judge on 10.12.2018 in CrI.M.P.No.2190 of 2018 in S.C.No.52 of 2017. Accordingly, this petition is allowed. The petitioners are permitted to examine the list of witnesses produced by them i.e 1 to 4, 6 & 7 viz. 1. Bharathi, S/o. Gunasekar - Ocular Witness, 2. Prabhakaran, S/o. Mani - who worked under the deceased Madhan, 3. Mohammed Ravuthar, S/o. Pakkitudeen, witness who is residing in the place where A1, A2 were arrested, 4. Selvam, S/o. Karuvandu @ Thiyagarajan, Tha. Mu. Mu. Ka Ambulance Driver, Adhavangudi in whose ambulance deceased Madhan was taken to the Hospital, 6. The Chief Doctor of Orthopedics, Vinayaga mission Medical College, Karaikal - Doctor who performed surgery for A1, 7. V. Selvaraj, Sub Registrar, Sub Registrar Officer, Thagattu, Vedharanyam, the Sub Registrar who registered the marriage of deceased Madhan.

11.The learned Trial Judge is hereby directed to permit the petitioners to complete the examination of the list of 1 to 4, 6 & 7 witnesses within three hearing dates and after examining the defence witnesses, the Trial Judge shall complete the trial process within a period of three months. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsn/kas

To.

1.The Principal District and
Sessions Judge,
Tiruvarur.

2.The Inspector of Police
Koradacheri Police Station
Tiruvarur District

3.The Public Prosecutor
High Court, Madras.

+lcc to Mr.K.M.Subrahmanian, Advocate, S.R.No.12166

CRL.O.P.No.30429 of 2018
and
CRL.M.P.No.17925 of 2018

NRL(CO)

rrs 14/02/2019

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