



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2019

CORAM

THE HONOURABLE MR. JUSTICE **N.SESHASAYEE**

Crl.O.P.(MD)No.3550 of 2019
in Crl.M.P.No.2019 of 2019

1. T.Justin Raj
2. Jessy ... Petitioners/accused Nos. 1 and 2
Vs.

The State,
Rep.by the Inspector of Police,
All Women Police Station,
Kuzhithurai,
Kanyakumari District. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the impugned order passed in Crl.M.P.No.387 of 2019 in C.C.No.106 of 2005 dated 01.02.2019 on the file of the learned Judicial Magistrate No.I, Padmanabhapuram and to set aside the same.

For Petitioners : Mr.K.Vamanan
For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed seeking to quash the impugned order passed in Crl.M.P.No.387 of 2019 in C.C.No.106 of 2005 dated 01.02.2019 on the file of the learned Judicial Magistrate No.I, Padmanabhapuram.

2. Heard the learned counsel appearing for the petitioners and the learned Government Advocate(Crl.side) appearing for the respondent.

3.In C.C.No.106 of 2005, the petitioners are facing trial for the charges under Sections 406, 420, 498(A) IPC and Sections 4 and 6 of the Dowry Prohibition Act. The petitioners have filed an application under Section 311 Cr.P.C for recalling P.W.s 1 and P.W.2, P.W.4 to P.W.6. The said petition came to be dismissed by the impugned order of the learned Magistrate. Challenging the same, the petitioners are before this Court.

4. On going through the order, it is seen that the trial of the case is commenced and on 25.06.2014, P.W.1 and P.W.2 were examined. Subsequently, P.W.4 to P.W.6 were examined on 01.12.2018 and



thereafter, P.W.8 to P.W.11 were examined on 19.12.2018.

5. The learned counsel for the petitioner would submit that the present petitioners had preferred Crl.O.P.No.12299 of 2014 for quashing the charge sheet and this Court has passed an order staying all the proceedings in the criminal case on 03.07.2014. Subsequently, the aforesaid criminal O.P.No.12299 of 2014 itself came to be dismissed but with the direction to dispose of the case within the period of six months.

6. *Prima facie* for non-examination of P.W.1 and P.W.2 the trial court cannot take responsibility since the case itself was stayed by this Court in Crl.O.P.No.12299 of 2014. Turning to other witnesses, namely P.W. 4, 5 and 6 are concerned, even though they have been examined, they were not cross-examined and the learned counsel for the petitioners would submit that the defacto complainant has not yet examined herself. He also submitted that even though she could have deferred their cross-examination, by oversight it was not done.

7. Taking an overall view of the case this Court considers that it would be only appropriate and in the interest of substantial justice, the petitioners be granted an opportunity to cross examine P.W.1, P.W.2 and P.W.4 to P.W. 6.

8. Accordingly, this petition is allowed and the learned Magistrate shall recall P.W.1 and P.W.2, P.W. 4 to P.W.6 and the petitioners shall cross examine them on the same day. Subject to this order, the learned Magistrate shall strive to dispose of the matter within the period stipulated by this Court in Crl.O.P.No.12299 of 2014. Consequently, connected Crl.M.P. (MD) No.2019 of 2019 is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar

CM

To

1.The Judicial Magistrate No.I,
<https://hcservices.ecourts.gov.in/hcservices/>
Puducherry.



2.The Chief Judicial Magistrate,
Nagercoil at Kanyakumari.

3.The Inspector of Police,
All Women Police Station,
Kuzhithurai, Kanyakumari District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.K.VAMANAN , Advocate SR.No. 53090.

Cr1.O.P. (MD) No.3550 of 2019

07.03.2019

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