



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.06.2019**

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

WEB COPY

Crl.O.P.(MD)No.7006 of 2019

and

Crl. M.P.(MD)No.4566 of 2019

1.Ramu

2.Ganesan

... Petitioners

-Vs-

State by

The Sub-Inspector of Police,

Chinnamanur Police Station,

Theni District.

... Respondent

Prayer: Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the learned Judicial Magistrate, Uthamapalayam, dismissing the petition in Crl.M.P.No.4321 of 2018 in C.C.No.340 of 2013 dated 08.04.2019.

For Petitioners

: Mr.G.Rajan

For Respondent

: Mr.K.Suyambulinga Bharathi

Government Advocate (Crl. side)

ORDER

This petition is filed to set aside the order passed by the learned Judicial Magistrate, Uthamapalayam, dismissing the petition in Crl.M.P.No.4321 of 2018 in C.C.No.340 of 2013 dated 08.04.2019.

2. According to the petitioners, the petitioners are A1 & A2 in C.C.No.340 of 2013 on the file of the learned Judicial Magistrate, Uthamapalayam. The grievance of the petitioners is that the trial in the aforesaid case was posted on 27.06.2018. On that day, the petitioner's counsel was not available and he was not able to cross examine the prosecution witnesses and the learned trial Judge has examined the prosecution witnesses in chief on the very same day and closed the evidence on 17.07.2018 itself. Thereafter, the petitioners filed a petition in Crl.M.P.No.4321 of 2018, under Section 311 Cr.P.C., to recall the prosecution witnesses and cross examine them. The learned Judicial Magistrate, Uthamapalayam, without considering the bonafide reasons, dismissed the petition. Now challenging the same, the present petition has been filed by the petitioners.

3. Heard Mr.G.Rajan, learned counsel appearing for the petitioners and Mr.K.Suyambulinga Bharathi, learned Government Advocate (crl. Side) appearing for the respondent.



4. It is seen that due to the non-availability of the petitioners' counsel on that day, the prosecution witnesses could not be cross examined. The learned Judicial Magistrate, Uthamapalayam, has examined all the prosecution witnesses and closed the evidence on the same day. Apart from that, the petitioners have also filed the petition in CrI.M.P.No.4321 of 2018 within a short time to recall the witnesses.

5. Considering the above facts and circumstances of the case and considering the fact that the petitioners being accused, a fair opportunity should be given to put forth their defence, the order passed by the learned Judicial Magistrate, Uthamapalayam, in CrI.M.P.No.4321 of 2018 in C.C.No.340 of 2013 dated 08.04.2019, is set aside.

6. It is stated that the matter is posted for further hearing on 12.06.2019, and on that day, the prosecution witnesses are directed to appear before the trial Court and the petitioners are directed to cross examine all the witnesses on the very same day. If the petitioner failed to cross examine the witnesses on 12.06.2019, it is open to the learned Judicial Magistrate, Uthamapalayam, to proceed with the trial.

7. In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CrI.side)

/ True Copy /

Sub Assistant Registrar (CS-II)

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To

1.The Judicial Magistrate, Uthamapalayam.

2.The Sub-Inspector of Police,
Chinnamanur Police Station, Theni District.

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

+1 CC to M/s.G.RAJAN, Advocate (SR-67151[F] dated 06/06/2019)

CrI.O.P. (MD) No.7006 of 2019
06.06.2019