



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2019

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.O.P. (MD) .No.9018 of 2019

1.Packiam @ Pakiaraj
2.Peter
3.Santhanam
4.Annapackiam

: Petitioners

Vs.

The State through
the Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.
In Crime No.816 of 2013.

: Respondent

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code to set aside the order passed by the Assistant Sessions Court, Srivilliputhur, in Crl.M.P.No.49 of 2019 in S.C.No.118 of 2016, on 04.04.2019 and allow this Criminal Original Petition.

For Petitioners : Mr.M.Jothibas
For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl. side)

ORDER

This Criminal Original Petition has been filed to set aside the order passed by the Assistant Sessions Court, Srivilliputhur, in Crl.M.P.No.49 of 2019, in S.C.No.118 of 2016, dated 04.04.2019, dismissing the petition filed by the petitioners under Section 311 of the Code of Criminal Procedure.

2.The petitioners are arrayed as Accused Nos.2 to 5 in the above criminal case and they have been charged with for the offences under Sections 147, 447, 294(b), 436 and 506 (i) of the Indian Penal Code.

3. The learned counsel appearing for the petitioners contended that since the Advocate was not present at the time of examination of witnesses and also some of the documents were not available with them, the petitioners were not in a position to cross-examine the witnesses and there is no *mala fide* on the part of the petitioners and in the interest of justice, the petitioners may be granted an opportunity of cross-examination.



4. The learned Government Advocate (Crl. side) appearing for the respondents, on instructions, submitted that the trial has commenced in the year 2018 and all the witnesses were examined and now, the matter is posted for questioning of accused under Section 311 of the Criminal Procedure Code on 17.07.2019. After closing of prosecution evidence, the present application has been filed only with a *mala fide* intention.

5. I have considered the rival submissions and perused the records carefully.

6. Admittedly, in this case, trial has commenced on 04.01.2018 and P.W.1 to P.W.3 were examined on that day. P.W.5 and P.W.6 were examined on 27.09.2018 and P.W.8 was examined on 07.03.2019. But the petitioners did not cross-examine the witnesses viz., P.W.1 to P.W.3, P.W.5, P.W.6 and P.W.8. Thereafter, on 14.03.2019, the accused have filed an application under Section 311 of the Code of Criminal Procedure to recall the above said witnesses for cross-examination. But the application has been dismissed by the learned Assistant Sessions Judge, Srivilliputhur on the ground that there was no representation on behalf of the accused and also non-bailable warrants are pending against them.

7. Even though the trial has commenced in January 2018, the petitioners did not come forward to examine anyone of the witnesses and only after the closure of the prosecution witnesses, the present application has been filed. The learned Sessions Judge, after considering the entire materials available on record, dismissed the application filed by the petitioners.

8. However, taking into consideration the fact that an opportunity should be given to the accused to prove their innocence and it is part of fair trial guaranteed under Article 21 of the Constitution of India, and also in the interest of justice, I am inclined to set aside the impugned order. Accordingly, the impugned order dated 04.04.2019 is set aside. The learned Trial Judge is directed to issue fresh summons to the prosecution witnesses for the purpose of cross-examination on 16.07.2019, on that date, the petitioners are directed to cross-examine all the witnesses. If the petitioners failed to cross-examine the witnesses, it is open to the learned Sessions Judge to proceed with the trial. Apart from that, in order to meet out the expenses of the witnesses, the petitioners are directed to deposit a sum of Rs.5,000/- [Rupees Five Thousand only] before the Assistant Sessions Court, Srivilliputtur, to the credit of S.C.No.118 of 2016, within a period of two weeks from the date of receipt of a copy of this order.



9. The Criminal Original Petition stands allowed on the above terms.

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Sd/-

Assistant Registrar(CS-III)

Sub Assistant Registrar(CS)

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To

1.The Assistant Sessions Court,
Srivilliputhur.

2.The Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.

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

+1CC TO MR.M.JOTHI BASU, Advocate Sr. No. 72051

Order made in

CRL.O.P. (MD) .No.9018 of 2019

Dated: **27.06.2019**

RP(CO)

TR (11.07.2019) 3P 5C