

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATE: 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN**Cr1.O.P.(MD).No.11341 of 2019****and****Cr1.M.P.(MD).No.7104 of 2019**

1.Arputharaj

2.Chitra

... Petitioners

-Vs-

The Inspector of Police,
Taluk Police Station,
Dindigul.

... Respondent

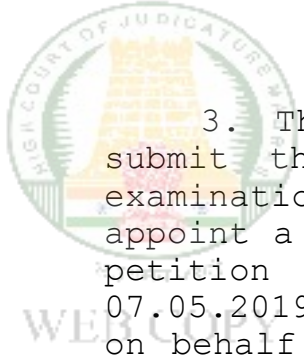
Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to set aside the order dated 09.07.2019 made in Cr.M.P.No.2484 of 2019 in C.C.No.174 of 2015 on the file of learned Judicial Magistrate No.I, Dindigul.

For Petitioners : Mr.V.Sasi Kumar
For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate (Cr1.side)

O R D E R

This petition has been filed seeking to set aside the order passed by the learned Judicial Magistrate No.I, Dindigul in Cr.M.P.No.2484 of 2019 in C.C.No.174 of 2015, dated 09.07.2019, dismissing the petitioner's application filed under Section 311 of Cr.P.C.

2. The petitioners are the accused Nos.1 and 2, and they have been charged with for the offences under Sections 452, 294(b) and 506(i) of I.P.C. Earlier, after commencing the trial, P.Ws.1 and 2 were examined on 09.04.2019, and since the petitioners have not able to engage a lawyer, they took time for cross-examination. Hence, the matter was adjourned to 07.05.2019, and they have also engaged a counsel. The counsel filed a memo of appearance on 07.05.2019, and sought for adjournment to cross-examine P.Ws.1 and 2. The request of the petitioners counsel was not accepted and the evidence was closed on that day itself. Thereafter, the petitioners filed an application under Section 311 of Cr.P.C., to recall the above witnesses, the application has been dismissed. Hence, the present criminal original petition has been filed.



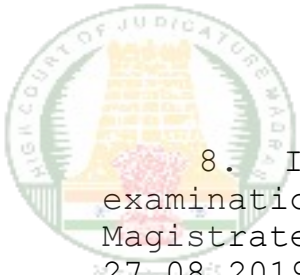
3. The learned counsel appearing for the petitioners would submit that earlier the matter was posted on 09.04.2019 for examination of P.Ws.1 and 2 and the petitioners sought time to appoint a Legal Aid counsel, and the trial Court has forwarded the petition to the Legal Aid Centre, Dindigul. Thereafter, on 07.05.2019, counsel for the petitioners filed a memo of appearance on behalf of the petitioners and sought time to cross-examine the witnesses, the learned Judicial Magistrate has dismissed the application filed under Section 311 of Cr.P.C. The learned counsel further submitted that, there is no *mala fide* intention on the part of the petitioner.

4. The learned Government Advocate (Crl.side) would submit that the matter is pending from the year 2015, P.Ws.1 and 2 were examined on 09.04.2019, and on the request of the petitioners, the matter was adjourned to 07.05.2019. On that day also, the petitioners were not ready to cross examine the witnesses. In the above circumstances, the learned Judicial Magistrate rightly dismissed the application filed by the petitioners under Section 311 of Cr.P.C.

5. I have considered the rival submissions and perused the materials available on record.

6. From the materials available on record, it is seen that, P.Ws.1 and 2 were examined on 09.04.2019, on that day, the petitioners filed an application before the Court seeking for Legal Aid counsel as they are not in a position to engage the lawyer. Then the matter was adjourned to 07.05.2019. On that day, the petitioners themselves engaged a lawyer, and the counsel appearing for the petitioners filed a memo sought time for cross-examination, but the learned Judicial Magistrate has dismissed the application stating that there is no sufficient reason for allowing the application.

7. Considering the fact that, the petitioners earlier sought time to engage the lawyer, and the matter was adjourned to 07.05.2019, on that day, the counsel appearing for the petitioners filed a memo of appearance on behalf of the petitioners and sought further time to cross examine the witnesses, that request was rejected and the evidence of P.Ws.1 and 2 was closed. Immediately the petitioners filed an application under Section 311 of Cr.P.C., on 07.05.2019 itself. A fair trial is a fundamental right guaranteed under Article 21 of the Constitution of India. Perusal of records shows that there is no *mala fide* intention on the part of the petitioners to delay the trial. In the above circumstances, in the interest of justice, in order to give an opportunity to the petitioners, this Court is inclined to set aside the order passed by the learned Judicial Magistrate. Accordingly, the order passed by the learned Judicial Magistrate No.I, Dindigul in Cr.M.P.No.2484 of 2019 in C.C.No.174 of 2015, dated 09.07.2019 is set aside.



8. It is stated that the matter is posted for cross-examination of other witnesses on 27.08.2019, the learned Judicial Magistrate No.I, Dindigul is directed to recall P.Ws.1 and 2 on 27.08.2019, and the petitioners are directed to cross-examine both the witnesses on the day itself. If the petitioners failed to cross-examine P.Ws.1 and 2, on that day, it is open to the learned Judicial Magistrate to proceed with the trial. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

akv

To

1. The Chief Judicial Magistrate,
Dindigul.
2. The Judicial Magistrate No.I,
Dindigul.
3. The Inspector of Police,
Taluk Police Station,
Dindigul.

+1CC TO MR.V.SASI KUMAR, Advocate Sr. No. 81405

Cr1.O.P. (MD) .No.11341 of 2019
13.08.2019

TR (20.08.2019) 3P 5C