



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) .No.11404 of 2017

and

Crl.M.P. (MD) Nos.7836 & 7837 of 2017

1. Amjath Kumar

2. Murugan, S/o Pathan

3. Murugan, S/o Shanmugham

... Accused / Petitioners/
Petitioners

Vs.

The Inspector of Police,
Valliyoore Police Station,
Tirunelveli District.
(Crime No.566/2012)

... Respondent/
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records relating to the order dated 17.08.2017 made in Cr.M.P. No.574 of 2017 in S.C.No.393 of 2013 on the file of the IV Additional Sessions Judge, Tirunelveli and set aside to the extent of rejecting the petitioner's prayer to recall P.W.1 alone by allowing this Criminal Original petition and consequently permit the petitioner to recall P.W.1.

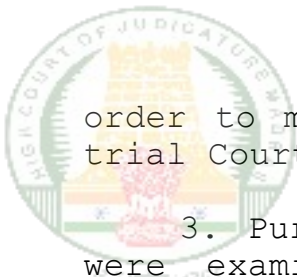
For Petitioners : Mr.R.Anand
For Mr.P.Samuel Gunasingh

For Respondent : Mr.M.Chandrasekaran,
Additional Public Prosecutor

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioners under Section 311 of Cr.P.C. to recall P.W.1, P.W.15 & P.W.16 for further cross examination.

2. The petitioners are facing trial before the Court below for the offence under Sections 294(b), 342, 506(ii) & 302 of IPC. The prosecution filed an application in Crl.M.P.No.512 of 2017 before the trial Court to issue summons to two additional witnesses in



order to mark certain reports. The application was allowed by the trial Court by an order dated 31.07.2017.

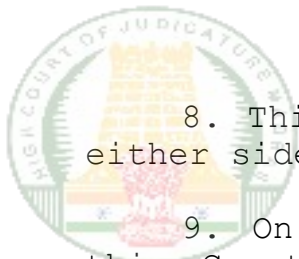
3. Pursuant to the above said order, the additional witnesses were examined by the prosecution as P.W.17 & P.W.18 and the documents were also marked. These witnesses were cross examined by the petitioners. During the course of the cross examination, certain answers were elicited from the said witnesses and according to the petitioners, some contradictory statements have been elicited with regard to some vital facts in this case. Therefore, the petitioners filed an application under Section 311 of Cr.P.C. to recall P.W.1, P.W.15 & P.W.16 for further cross examination and examine them on the aspect of the contradictions that were elicited from P.W.17 & P.W.18. This application came to be partly allowed by the court below insofar as recalling of P.W.15 & P.W.16 are concerned and the application was dismissed insofar as P.W.1 is concerned.

4. The learned counsel for the petitioners submitted that the petitioners had elicited some answers from P.W.17 & P.W.18, who were examined as additional witnesses by the prosecution and there is a material contradiction with regard to certain vital facts which needs to be put to the eye witness, viz. P.W.1 and to the Investigating Officers, namely P.W.15 & P.W.16. The learned counsel submitted that this opportunity has to be given to the petitioners in order to ensure fair trial to the petitioners and in order to enable the petitioners to effectively defend themselves in the case.

5. The learned counsel further submitted that pursuant to the orders passed by the Court below, P.W.15 & P.W.16 were recalled and they have also been further cross-examined. The learned counsel, therefore concluded his arguments by submitting that the petitioners will further cross examine P.W.1 only on the aspect of the contradictions elicited from P.W.17 & P.W.18 and it will be completed on the same day.

6. The learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that the sessions case is of the year 2013 and the accused persons are dragging on the proceedings by filing one application after another. The learned Additional Public Prosecutor further submitted that on an earlier occasion, a similar application was filed in Crl.M.P.No.500 of 2017 and the same was dismissed by the trial Court by an order dated 27.07.2017. Therefore, the learned Additional Public Prosecutor contended that a similar attempt is being made by filing one more application and the accused persons must not be permitted to drag on the proceedings by adopting these tactics.

7. The learned Additional Public Prosecutor, therefore submitted that there is no ground to interfere with the orders passed by the Court below and the Court below has rightly dismissed the application insofar as P.W.1 is concerned.



8. This Court has carefully considered the submissions made on either side and the materials available on record.

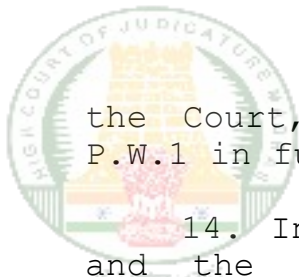
9. On a careful consideration of the materials placed before this Court, the earlier application filed by the petitioners in Crl.M.P.No.500 of 2017 was dismissed before P.W.17 & P.W.18 were examined as additional witnesses by the prosecution. The present application has been filed after the examination of P.W.17 & P.W.18 and therefore, the present application stands on a completely different footing. By means of filing the present application, the petitioners want to further cross examine the eye witness and the Investigating Officers with regard to certain material contradictions that were elicited from P.W.17 & P.W.18.

10. The Court below while considering the application, has thought it fit to allow the application insofar as P.W.15 and P.W.16 are concerned and they are the Investigating Officers. However, the Court below proceeded to dismiss the application insofar as P.W.1 is concerned, on the ground that he has already been cross examined and there is no necessity to recall him for further cross-examination.

11. The purpose of Section 311 of Cr.P.C. is to ensure fair trial and fair opportunity to the parties to put forth their case before the Court. The petitioners are facing very serious charges under Section 302 IPC. Therefore, sufficient opportunity must be given to the petitioners to examine witnesses. In the considered view of this Court, while the Court below allowed the application insofar as recalling P.W.15 & P.W.16 are concerned, it ought to have applied the same reasoning insofar as P.W.1 is concerned. After all, P.W.1 is the eye witness in this case and the petitioners are seeking to cross examine him on the material contradictions elicited from P.W.17 and P.W.18. Therefore, this Court is of the considered view that opportunity must be given to the petitioners to recall P.W.1 for further cross examination.

12. In view of the above, the order passed by the Court below in Crl.M.P.No.574 of 2017, dated 17.08.2017 is hereby set aside, insofar as dismissing the application to recall P.W.1 for further cross examination. The Court below shall fix a date for the presence of P.W.1 before the Court and on the date of his appearance, he shall be cross examined and the cross examination shall be completed on the same day. It is made clear that this Court is not permitting the petitioners to conduct a *de novo* cross examination of P.W.1. The cross examination has to confine itself only with regard to putting questions on the contradictions that is said to have been elicited from P.W.17 & P.W.18. The Court below shall keep this in mind while P.W.1 is cross examined.

13. It is made clear that P.W.1 shall be further cross examined on the date of his appearance before the Court and if for any reason, he is not cross examined on the day when he appears before



the Court, the petitioners shall forfeit their right to recall P.W.1 in future.

14. In the result, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings in S.C.No.393 of 2013, within a period of three(03) months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Cs-III)

// True Copy //

Sub Assistant Registrar(CS)

sts

To

1. The IV Additional Sessions Judge,
Tirunelveli.

Copy to: The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.SAMUEL GUNASINGH, Advocate SR-86504.

Order made in

Crl.O.P. (MD) .No.11404 of 2017

CS (03.10.2019) 4P 4C