



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2019

CORAM:

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THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P. (MD)No.18448 of 2019

1. Karnan
2. Mani
3. Selvi

... Petitioners/A1 to A3

Vs

State through by
The Deputy Superintendent of Police,
Valliyoor Division,
Panagudi Police Station,
Tirunelveli District.
In Crime No. 31 of 2013.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the dismissal order in Crl.M.P. No. 6121 of 2019, dated 29.07.2019 passed by the learned Sessions Judge, Mahila Court, Tirunelveli and recall the witness of P.W.11, P.W.14, P.W.16 and P.W.18 allow to cross examine them.

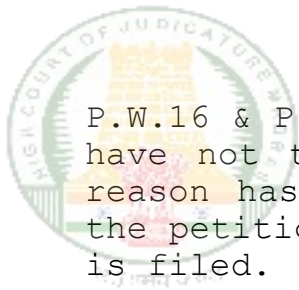
For Petitioner : Mr.C. Susi Kumar

For Respondent : Mrs.S. Bharathi,
Government Advocate (crl. Side)

ORDER

The Criminal Original Petition has been filed to set aside the dismissal order in Crl.M.P. No. 6121 of 2019, dated 29.07.2019 passed by the learned Sessions Judge, Mahila Court, Tirunelveli and recall the witness of P.W.11, P.W.14, P.W.16 and P.W.18 allow to cross examine them.

2. It is seen from the records that the petitioners were arraigned as accused in S.C. No.144 of 2014 on the file of the learned Sessions Judge, Mahila Court, Tirunelveli for the offence under Section 304(b) of IPC. The petitioners have not cross examined the witnesses, P.W.11, 14, 16, 18 are highly essential witnesses. The trial Judge found that P.W.11 was examined in chief on 11.04.2017 and P.W.14 was examined in chief on 25.04.2017 and



P.W.16 & P.W.18 were examined on 19.01.2018 and that the petitioners have not taken any steps to recall the witnesses and no specific reason has been stated in the petition and at the stage dismissed the petition. Against which, the present Criminal Original Petition is filed.

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3. The learned counsel appearing for the petitioners would submit that the petitioners are accused Nos.1 to 3 facing trial in S.C. No. 144 of 2014 for the offence under Section 304(b) of IPC. The petitioners have not cross examined P.W.11, 14, 16 & 18 and thereby they have filed a petition in Crl.M.P. No. 6121 of 2019 seeking to recall the witnesses, since the cross examination of the aforesaid witnesses are essential for arriving at just decision of the case. However, the trial Court without affording an opportunity to the petitioner to recall the witnesses has dismissed. Thereby, the petitioners would seek for setting aside the order.

4. Per Contra, the learned Government Advocate (Crl. Side) appearing for the respondent police would submit that the aforesaid witnesses have been examined in chief as early as during the year 2017. She would further submit that P.W.11 was examined in chief on 11.04.2017, P.W.14 was examined on 25.04.2017, thereafter, P.W.16 was examined by the accused and P.W.18/Investigating Officer was examined on 18.01.2019. Till 28.06.2019, the petitioners have not taken any steps to recall the aforesaid witnesses and that no specific reason had been stated in the petition seeking to recall the witnesses. She would further submit that, though the petitioner to recall has been dismissed on 27.09.2019, the petitioners have not taken any steps to challenge the order immediately and the petition has been filed much belatedly after four months only with the intention to drag the trial.

5. Heard both sides and perused the materials available on record.

6. On perusal of records that the witnesses have been examined in chief during 2017. The petition has been filed much belatedly after two years. Further, the petitioners have already cross examined P.W.16 and no reason has been assigned by the petitioners to recall P.W.16 for cross examination. The trial Court has found that no reason has been assigned by the petitioners for recalling the witnesses and nothing had been elicited in the petition that the evidence of the witness is necessary for arriving at just decision of the case.

7. This Court is of the opinion that, there is no infirmity in the order, dated 29.07.2019 passed in Crl.M.P. No. 6121 of 2019 by the learned Sessions Judge, Mahila Court, Tirunelveli. Further, the petition to set aside has been filed four months after passing of the impugned order. Hence, this Court finds no merits in the instant



8. Accordingly, the Criminal Original Petition stands dismissed.

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Sd/-

Assistant Registrar ()

/ /2020

Sub Assistant Registrar(CS)

To

1. The Sessions Judge,
Mahila Court, Tirunelveli.
2. The Deputy Superintendent of Police,
Valliyoore Division,
Panagudi Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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