

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

CRL.O.P.No.4118 of 2020

and

Crl.M.P.No.2372 of 2020

1.Elumalai

2.Lakshmi

....Petitioners/Accused

Vs.

State Rep.by

The Sub-Inspector of Police

Veraiyoor Police Station

Tiruvannamalai District.

... Respondent/complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in S.C.No.111 of 2012 dated 24.01.2020 on the file of the Fast Track Mahila Judge at Thiruvannamalai, pending trial.

For Petitioners: Mr.L.Mahendran

For Respondent : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order passed by the Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, in the memo filed by the petitioners dated 24.01.2020.

2. The learned counsel for the petitioners has submitted that the petitioners are facing trial for the alleged offence punishable under Sections 302 and 201 IPC r/w 34 IPC. He further submitted that on the side of the prosecution 19 witnesses were examined as PWs 1 to 19. He further submitted that PW19 is the Investigating Officer and he was not cross examined, when he was examined in chief and hence, the petitioners have filed a petition to recall the said witness and the same was allowed by the trial Court and subsequently, since the petitioners have not paid the process fee for sending summons, PW19 has not appeared. Consequently, the trial Court has closed the evidence.

3. He further submitted that the petitioners have filed a memo along with process fees requesting the trial Court to issue summon to PW19. The trial Court has rejected the said memo by the order dated 24.01.2020. He further submitted that unless the said witness (I.O) is cross examined, the petitioners cannot prove their innocence and therefore, he requests to give one more opportunity to the petitioners to cross examine the said witness. He further submitted that the petitioners are prepared to deposit a sum of Rs.15,000/- (Rupees Fifteen Thousand Only) before the Court, if the Court is inclined to allow this petition.

4. The learned Additional Public Prosecutor has submitted that the on the side of the prosecution 19 witnesses were examined as PWs 1 to 19 and at that time, the petitioners have not cross examined the said witnesses and only thereafter, they have filed a petition to recall the aforesaid witnesses and in order to give an opportunity to the said petitioners, the trial Court itself has allowed the said application and thereafter, PWs 1 to 18 were recalled and they were cross examined, but process fee not paid for issuing summons to PW19 and hence the trial Court has closed the evidence and rejected the memo filed by the petitioners and in the said order, this Court need not interfere.

5. Taking into consideration of the charges being faced by the petitioners and also the endorsement made by the learned counsel for the petitioners, that the petitioners are prepared to deposit a sum of Rs.15,000/- as cost, this Court is inclined to allow this petition by imposing conditions.

6. In the result, this petition will be allowed on deposit of Rs.15,000/- (Rupees Fifteen Thousand only) before the trial Court on or before 05.03.2020, failing which, this petition shall stand dismissed without further reference to this Court. If the petitioners have complied with the aforesaid condition within the stipulated time, the trial Court is directed to recall PW19 and give an opportunity to the petitioners to cross examine the said witness and after cross examining the said witness, the trial Court is directed to pay a sum of Rs.2,000/- towards expenses of PW19 and deposit the remaining amount to the credit of District Legal Service Authority. The petitioners shall cross examine the said witness on the date of his

appearance before the trial Court without seeking further adjournments. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/
Sub Asst. Registrar

dna
To

1.The Fast Track Mahila Judge,
Thiruvannamalai.

2.The Sub-Inspector of Police
Veraiyoor Police Station
Tiruvannamalai District.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.L.Mahendran Advocate sr16096

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