

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.O.P.No.33805 of 2019
and
CRL.M.P.No.18624 of 2019

1.Manikandan
2.Gowtham
3.Nagaraaj

.. Petitioners

Vs.

State Rep by,
Sub-Inspector of Police,
Nallore Police Station,
Namakkal.

.. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order dated 24.07.2019 made in C.M.P.No.3687 of 2019 in C.C.No.96 of 2014 on the file of the Judicial Magistrate, Paramathy.

For Petitioners	: Mr.L.Sharadh Kumar
For Respondent	: Mr.S.Karthikeyan Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed seeking to set aside the order dated 24.07.2019 made in C.M.P.No.3687 of 2019 in C.C.No.96 of 2014 on the file of the Judicial Magistrate, Paramathy.

2.Heard Mr.L.Sharadh Kumar, the learned counsel appearing for the petitioners and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondent.

3.The petitioners 1 to 3 herein were arrayed as Accused Nos.2 to 4 in C.C.No.96 of 2014 pending on the file of the Judicial Magistrate, Paramathy. Before the Trial Court, at the time of examining P.W.1 & P.W.17, the counsel appearing for the petitioners/accused has not cross examined them. Consequently, for the purpose of completing the cross examination of P.W.1 & P.W.17, on 24.07.2019, the petitioner herein filed an application under Section 311 of Cr.P.C. before the Judicial Magistrate, Paramathy praying to allow the same.

4.After assigning the case number in C.M.P.No.3687 of 2019, the learned Judicial Magistrate, Paramathy by impugned order dated 24.07.2019 dismissed the said application stating that those applications are filed without any reason, further hold that the said application is filed by the petitioner for the purpose of dragging the proceedings. Apart from that the said application has been filed belatedly. Aggrieved over the same, the petitioners are before this Court.

5.It is the main contention of the petitioners that only for the purpose of eliciting contradiction in the evidence of prosecution witness, the petitioners filed an application under Section 311 Cr.P.C to recall the P.W.1 & P.W.17. In fact the cross examination of P.W.1 has not been completed on the date on which chief examination of P.W.1 and the same is only a bonafide mistake committed by the petitioner. In otherwise, there is no intention on the part of the petitioners that he is attempted to drag on the entire proceedings as alleged by the learned Additional Public Prosecutor.

6.Now on considering the submissions made by the learned counsel appearing on either side, it seems that on 23.01.2017, P.W.1 has appeared before the Judicial Magistrate, Paramathy and thereafter, his chief examination has also been recorded on the same day subsequently for the reason known to the petitioner cross examination has not completed till today. However, due to subsequent absence of the petitioners the case was adjourned time and again till today. Finally in the year 2019, the petition mentioned application has been filed before the Trial Court.

7.In general it is the duty of the petitioners to complete the cross examination on the very same day, on which the chief examination has been recorded. But here it is a case the petitioners have lethargically acted and failed to complete the cross examination.

8.However, for rendering complete justice, unless for specific reason which upheld the right of prosecution, it should be necessary to give complete opportunity to the accused for placing their cases by way of cross examination. Therefore, I am of the considered opinion that this application has to be allowed by imposing the cost. Therefore, CMP.No.3687 of 2019 filed by the petitioners are allowed subject to the condition that the petitioners have to pay Rs.10,000/- to the Taluk Legal Services, Paramathy within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the learned Judicial Magistrate, Paramathy is directed to take necessary

steps for the appearance of P.W.1 & P.W.17 in a single day for the purpose of cross examination and thereafter, he has to dispose of the case within a period of one month from the date on which the cross examination of P.W.1 & P.W.17 has been completed.

9.This Criminal Original Petition is allowed, accordingly. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

- 1.The Sub-Inspector of Police,
Nallore Police Station,
Namakkal
- 2.The Judicial Magistrate,
Paramaethy
- 3.The Additional Public Prosecutor,
High Court of Madras, Chennai.

CRL.O.P.No.33805 of 2019
and
CRL.M.P.No.18624 of 2019

BR(CO)
RMP(03/12/2020)