



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04.02.2020

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC(MD)No.14 of 2020

and

Crl.MP(MD)No.74 of 2020

1.Jeyalakshmi
2.Renganayagi
3.Muthuramalingam
4.Dhanasekaran
5.Sakthi

: Petitioners/Petitioners/
A2 to A6

Vs.

1.The State represented
through the Sub Inspector of Police,
Thirupparankundram Police Station,
Madurai District.
(Crime No.33 of 2013)

: 1st Respondent/
1st Respondent/Complainant

2.Sumathi

: 2nd Respondent/
2nd Respondent/
De-facto complainant

Prayer: Criminal Revision filed under section 397 and 401 of the Code of the Criminal Procedure against the order made in C.M.P.No.3504 of 2019 in C.C.No.268 of 2013, dated 14.11.2019 by the Judicial Magistrate No.VI, Madurai and direct the trial court to recall PW1 and PW2 for cross examination.

For Petitioners : Mr.P.R.Prithiviraj

For 1st Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate
(Criminal side)

For 2nd Respondent : No appearance

O R D E R

This criminal revision has been preferred against the order made in Cr.M.P.No.3504 of 2019 in C.C.No.268 of 2013, dated 14.11.2019 by the Judicial Magistrate No.VI, Madurai and to direct the trial court to recall PW1 and PW2 for cross examination.



2.The petitioners herein are arrayed as A2 to A6 in connection with a case in Crime No.33 of 2013 for the alleged offence under sections 147, 294(b), 277 and 506(i) IPC and subsequently, the 1st respondent police filed charge sheet for the offence under sections 147, 294(b) and 506(i) IPC and the same was taken on file as C.C.No.268 of 2013 on the file of the Judicial Magistrate No.VI, Madurai. In this case, totally 8 witnesses were examined on the side of the prosecution. On 20.08.2018, PW1 was examined in chief and she was also cross examined on the same day on the side of A1 and that on 10.09.2018, she was examined on the side of A7 and PW2 also examined in chief on 10.09.2018 and thereafter, the case was posted for cross examination of PW2. On 23.09.2018, when the case was posted for cross examination of PW2, on the side of the accused seeks time for cross examination. But the trial court closed the evidence and posted the case to 03.10.2019. The petitioners filed petition in Cr.MP No.3504 of 2019 under section 311 of the Criminal Procedure Code to recall PW1 and PW2. But the trial court dismissed the petition on 14.11.2019. Aggrieved over the said order, the petitioners are before this court.

3.Heard the learned counsel appearing on either side and perused the materials available on record.

4.The main contention of the petitioners is that the non-cross examination of the prosecution witnesses by the petitioners is neither willful nor wanton, but only due to unavoidable circumstances and the trial court failed to see that the petitioners are ready to undertake batta charges and to cross examine the witnesses on the same day, when they appear and other conditions that would be imposed by the trial court and the trial court failed to see that recalling the witnesses would not cause any prejudice to the prosecution, on the other hand, it would be needful for the petitioners to disprove the prosecution case and to establish their innocence and prays for allowing the criminal revision, by setting aside the order of the trial court.

5.It is seen from the records that originally the prosecution commenced on 20.08.2018 and on the same day, PW1 was examined in chief and subsequently, PW2 was examined in chief on 10.09.2018 and when the case was posted for cross examination of the above witnesses, due to non-availability of the counsel, who appearing for the accused before the trial court, seeks time for cross examination. But the trial court without considering the above reason, closed the evidence.

6.It is well settled that Section 311 Cr.P.C petition can be filed at any stage of the proceedings and the Court below has a wide discretionary power under Section 311 of Cr.P.C and the same



can be used to ensure interest of justice. According to the learned counsel appearing for the petitioners, the Court below has not exercised its discretion by allowing the application filed under Section 311 of Cr.P.C.

7. On coming the instant case on hand, it is seen that even though the petitioners were ready to undertake batta charges and to cross examine the witnesses on the day, the trial court without considering the same, has dismissed the petition filed under section 311 of the Criminal Procedure Code.

8. It is trite law that a petition under Section 311 Cr.P.C. can be filed at any time before the Judgment is delivered. But, at the same time, the petitioners should explain how the evidence of the said witnesses is essential to the just decision of the case. This court finds that the reasons stated by the petitioners are acceptable.

9. For all the reasons stated above, this court is of the considered view that the impugned order passed by the trial court is liable to be set aside and accordingly, it is set aside.

10. In fine, this criminal revision is **allowed**. The impugned order, dated 14.11.2019 passed by the Judicial Magistrate No.VI, Madurai, in Cr.M.P.No.3504 of of 2019 in C.C.No.268 of 2013 is hereby set aside. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

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/ /2020

Sub Assistant Registrar(CS)

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To,

1. The Judicial Magistrate No.VI, Madurai.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.D.SADIQ RAJA, Advocate (SR-4725[F] dated 04/02/2020)

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04.02.2020

JMN(04.03.2020) 3P : 4C

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