



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2020

CORAM:

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THE HONOURABLE **MR. JUSTICE A.D. JAGADISH CHANDIRA**

Crl.O.P. (MD) .No.1072 of 2020
and Crl.M.P. (MD) No. 453 of 2020

1. Perumal
2. Rakkappan

... Petitioners/Petitioners/accused

Vs.

State through Rep. by
The Inspector of Police,
Thirupparankundram Police Station,
Thiruparankundram, Madurai. ...Respondent/Respondent /Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the order passed in Crl.M.P. No. 4119 of 2019 in C.C. No. 328 of 2008 dated 19.12.2019 on the file of the learned Judicial Magistrate No.VI, Madurai and set aside the same.

For Petitioner : Mr.S. Saravanakumar

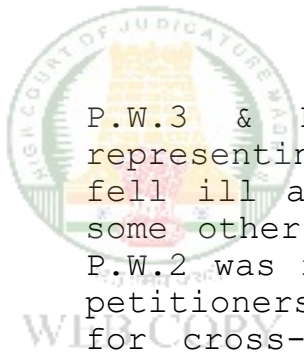
For Respondent : Mr. S. Chandrasekar,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition is filed to set aside the order, dated 19.12.2019 passed in Crl.M.P. No. 4119 of 2019 in C.C. No. 328 of 2008 on the file of the learned Judicial Magistrate No.VI, Madurai.

2. The learned counsel appearing for the petitioners would submit that the petitioners are facing trial for the offences under Sections 418, 420, 423, 468 r/w 120(b) of IPC, in C.C. No. 328 of 2008 pending on the file of the learned Judicial Magistrate No.VI, Madurai. He would further submit that the case is of the year 2008 and P.W.1 was examined on 20.07.2010 and thereafter, after six years

<https://hdservices2.courts.gov.in/hdservices1> Permitted by the prosecution on 23.05.2016, subsequently,



P.W.3 & P.W.4 were examined. The earlier counsel who was representing the petitioners at the time of examination of P.W.2 fell ill and thereafter, he died and the petitioners have engaged some other counsel and due to the illness of the earlier counsel P.W.2 was not cross examined on the day of chief examination. The petitioners have filed a petition seeking to recall P.W.1 & P.W.2 for cross-examination, whereas the trial judge holding that the petition has been filed after Nine years had dismissed the petition and that the trial Judge has also imposed a cost of Rs.2,000/- on the petitioner. He would further submit that the petitioners are in no way responsible for the delay in trial. Infact, P.W.1 was examined on 20.07.2010 and after six years, on 23.05.2016 P.W.2 was examined. The reason for not cross-examining the P.W.1 & P.W.2 was due to the death of the petitioner's counsel. He would further submit that the petitioners have filed a petition to recall of P.W.1 & P.W.2 alone, whereas the trial Judge by a cryptic order had dismissed the petition without assigning any valid reason.

3. It is seen from the records that P.W.1 was examined on 20.07.2010 and subsequently, P.W.2 was examined on 23.05.2016. The entire reason for the delay cannot be attributed to the petitioners alone. P.W.2 was examined during 2016 whereas the trial Judge had erroneously concluded that there is a delay of 9 years.

4. At this juncture, the learned counsel appearing for the petitioners would submit that the Petition before the Trial Court has been filed for recalling of P.W.1 & P.W.2 and now the petitioners is not pressing for recalling P.W.1 and he is moving to recall P.W.2 alone for cross examination.

5. Earlier, this Court directed the learned Public Prosecutor appearing for the first respondent police to find out the availability of P.W.2 and whether the prosecution will be able to produce P.W.2. On instructions he would submit that the P.W.2 is very much available in town and the first respondent will be able to produce the P.W.2 for cross-examination and further submit that the case was stands posted on 06.02.2020 for examination of further witnesses.

6. In view of the same, the order, dated 19.12.2019 in Crl.M.P. No. 4119 of 2019 in C.C. No. 328 of 2008, passed by the learned Judicial Magistrate No.VI, Madurai is set aside. The Respondent Police is directed to produce P.W.2 before the trial Court on the date fixed by the Trial Court. The petitioners shall deposit an amount of Rs.2,000/- (Rupees Two Thousand Only) before the Trial Court on or before 06.02.2020. The trial Judge shall disburse the amount of Rs.2,000/- to P.W.2 on the date of appearance for giving evidence.



7. With the above observations, the Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ksa

To

1. The Judicial Magistrate No.VI, Madurai.
2. The Inspector of Police,
Thirupparankundram Police Station,
Thiruparankundram, Madurai.

Copy to:

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

+1 CC to M/s.S.SARAVANAKUMAR, Advocate (SR-4485[F] dated 03/02/2020)

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03.02.2020

KK/SAR/04.02.2020/3P-5C/