



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2020

CORAM:

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

Crl.O.P.(MD).No. 3258 of 2020

and Crl.M.P. (MD) No. 1714 of 2020

1. Jeyasingh Arputharaj
 2. Rajagopal
 3. Karthikeyan
- ...Petitioners/Petitioners/A-1 to A-3

Vs.

1. The State rep. its
The Inspector of Police,
T. Kallupatti Police Station,
Madurai District.
(Crime No. 132 of 2015) ... Respondent/Respondent/Complainant

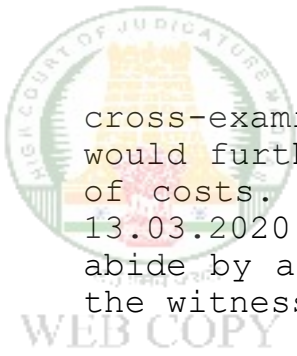
PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to set aside the order passed in Crl.M.P. No. 3118 of 2019 in C.C. No. 41 of 2016 dated 30.01.2020 on the file of the learned Judicial Magistrate No.III, Madurai.

For Petitioner : Mr.G. Chandrasekar
For Respondent : Mr.S. Chandrasekar
Additional Public Prosecutor

O R D E R

The Criminal Original Petition is filed to set aside the order, dated 30.01.2020 in Crl.M.P. No. 3118 of 2019 in C.C. No. 41 of 2016 passed by the learned Judicial Magistrate No.III, Madurai.

2. The learned counsel appearing for the petitioners would submit the petitioners are accused facing trial for the offences under Section 285 of IPC r/w 3 & 4 of LPG (RSD of Order 2000) r/w 7 (1)(2)(a) of EC Act, 1955 in C.C. No. 41 of 2016 on the file of the learned Judicial Magistrate No.III, Madurai. He would further submit that P.W.1 was examined on 13.09.2019. Since some certain documents was not available the petitioners' counsel was not cross examine the P.W.1 on the same day, thereby, the petitioners have filed a petition under Section 311 of Cr.P.C. seeking direction to recall the witness P.W.1 in Crl.M.P. No. 3118 of 2019 on 04.10.2019 and the trial Court finding that the petitioners have not stated valid grounds had dismissed the petition. He would further submit that the P.W.1 is a necessary witness and his evidence is necessary for arriving at a just decision of the case. He would further submit that, if the petitioners are not given one more chance to



cross-examine the witness/P.W.1 they will put to great hardship. He would further submit that the petitioners are prepared to imposition of costs. He would further submit that the case stands posted to 13.03.2020. He would submit that the petitioners are prepared to abide by any conditions and terms that may be imposed for recalling the witnesses.

3.The learned Additional Public Prosecutor appearing for the respondents would submit that the trial Court rightly finding that no proper and valid grounds have been adduced by the petitioner seeking to recall the witnesses and since no reason had been stated why they were unable to cross examine P.W.1 on the same day, had rightly dismissed the petition.

4.Heard both sides and perused the order passed by the trial court.

5.I find no infirmity in the order passed by the trial Judge. However, this Court is of the opinion that P.W.1 is an important witness in this case. If the petitioners are not given a chance to recall and cross examine P.W.1, it would amount to a case of no defence, resulting hardship to the petitioners and thereby, this Court is of the opinion that one more chance may be given to the petitioners to recall and cross examine P.W.1 on imposition of costs and terms.

6.This Court enquired the learned Additional Public Prosecutor whether the respondent will be able to produce P.W.1 before the trial Court on the next hearing date. The learned Additional Public Prosecutor on instructions from the respondent, would submit that the case stands posted to 13.03.2020 and that the respondent will be able to produce the witness before the trial Court on 13.03.2020.

7. In view of the above, the Criminal Original Petition is allowed on imposition of the followings conditions:-

1.The petitioner shall file a process memo for summoning P.W.1 along with the deposit of Rs.3,000/- before the trial Court on or before 03.03.2020.

2.On such deposit, the trial Court shall issue summons to P.W.1 for his appearance on 13.03.2020.

3.Out of the amount of Rs.3,000/-, Rs.2000/- shall be paid to the Legal Services Authority attached to the concerned court and Rs.1000/-shall be disbursed to the witness P.W.1.

4.The petitioners shall cross examine the witnesses

on the same day, failing which, they loose their chance.



5. In the event of witness not being produced on 13.03.2020 by the respondent police, the trial Court shall fix another date for his production.

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.III, Madurai.

2. The Inspector of Police,
T. Kallupatti Police Station,
Madurai District.

3.The Legal Services Authority,
District Court campus, Madurai.

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

+1cc to Mr.G.Chandrasekar, Advocate, SR No.7831

Crl.O.P. (MD) .No.3258 of 2020
24.02.2020

KK/26.02.2020/3P-6C