



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CrI.O.P.(MD)No.15283 of 2020 and
CrI.MP (MD) No.7388 of 2020

1.Adaikalam
2.Elango
3.Rengan
4.Karuppaiah

...Petitioners/Petitioners/
Accused 1 to 4

Vs.

The State Represented by
The Sub Inspector of Police,
Annavaasal Police Station,
Pudukottai District
(Crime No.7 of 2011)

...Respondent/Respondent /Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for records and set aside the order dated 16.10.2020 in Cr.M.P.No.51 of 2020 in SC No.10 of 2014 on the file of the Additional Assistant Sessions Court, Pudukottai and direct the trial Court to recall and re-examine the witnesses mentioned in Cr.M.P.No.51 of 2020.

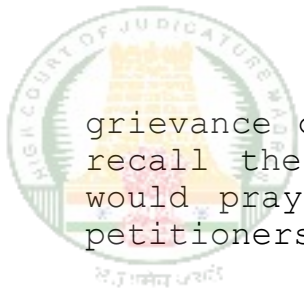
For Petitioner : Mr.S.Poornachandran
For Respondent : Mr.V.Neelakandan
Additional Public Prosecutor.

ORDER

This petition has been filed to set aside the order dated 16.10.2020 in Cr.M.P.No.51 of 2020 in SC No.10 of 2014 on the file of the Additional Assistant Sessions Court, Pudukottai and direct the trial Court to recall and re-examine the witnesses mentioned in Cr.M.P.No.51 of 2020.

2.Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor (Criminal Side) for the respondent.

3.The learned counsel for the petitioners would submit that the petitioners are facing trial in S.C.No.10 of 2014, on the file of the Additional Assistant Sessions Court, Pudukottai, for the alleged offences under Sections 294(b), 323,324, 307 r/w 34 IPC. When the case was posted for examination of investigating officer, the petitioners have filed a petition under Section 311 of Cr.P.C in Cr.M.P.No.51 of 2020, to recall and re-examine PW.1 to PW 3, in order to substantiate the petitioner's case. According to the petitioners, these witnesses were not cross examined by them. The



grievance of the petitioners is that the petition filed by them to recall the witnesses was dismissed by the trial Court. Hence, he would pray to set aside the order passed by the trial Court the petitioners may be given an opportunity to recall the witnesses.

4. The learned Additional Public Prosecutor (Criminal Side) appearing for the respondent would state that the trial of the case has already been commenced and PW 1 to PW 3 were examined on 26.11.2014 itself. The petitioners have filed the petition under Section 311 of Cr.P.C, on 16.10.2020, i.e after 6 years.

5. Perusal of record shows that the above case is of the year 2014. From the impugned order passed by the Court below, it is understood that the predecessor of the Presiding Officer, finding that the parties are relatives, have directed the parties to settle the matter amicably. Therefore, the parties were trying to negotiate for settlement and the parties took efforts to negotiate for settlement and as the matter was not settled, the petitioners have filed the present petition under Section 311 Cr.P.C., for recalling the witnesses PWs.1 to 3 and while dismissing the said petition, the learned Judge has stated that the offence under Section 307 IPC is not compoundable and therefore, the reason stated by the petitioner requesting to recall the above witnesses stating that negotiation for settlement was on, cannot be accepted. It is not in dispute that the learned Judge's predecessor had directed the parties to settle the matter amicably and therefore in that process, the petitioners had not cross examined the witnesses PWs.1 to 3 and therefore the petitioners necessarily have to be given opportunity to cross examine the witnesses.

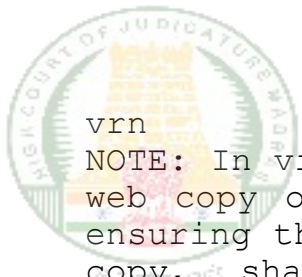
6. In view of the above, the impugned order dated 16.10.2020 in Cr.M.P.No.51 of 2020 in SC No.10 of 2014 passed by the learned judge is set aside and the matter is remanded to the learned Additional Assistant Sessions Court, Pudukottai. The learned judge is directed to fix a date for cross examination of witnesses PW1 to PW 3 and on the same day, the petitioners will have to cross-examine the witnesses. If the opportunity is not utilised by the petitioners, the learned judge shall proceed with the case in the manner known to law, as expeditiously as possible.

7. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

WEB COPY

To

1.The Additional Assistant Sessions Court, Pudukottai

2.The Sub Inspector of Police,
Annavaasal Police Station,
Pudukottai District

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

Crl.O.P. (MD)No.15283 of 2020 and
Crl.MP (MD) No.7388 of 2020

21.12.2020

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