

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.02.2021

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.3079 of 2021

1. Murugan

2. Mani @ Manikandan

3. Sekar

...Petitioners

Vs.

State rep. by
The Inspector of Police
Siva Kanchi Police Station
kancheepuram District.
(Crime No. 108 of 2016)

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 05.11.2019 passed in C.M.P. No. 5748 of 2019 in C.C. No. 164 of 2016, on the file Learned Judicial Magistrate No.1, Kancheepuram and to allow the Criminal Original Petition.

For Petitioner : Mr.R.Sasikumar

For Respondent : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioners under Section 311 of Cr.P.C. to recall PW1 and PW2 for cross examination.

2. The petitioners are facing trial before the Court below for offences under Section 294(b), 323 of IPC & Section 4 of Women Harassment Act. PW1 and PW2 were examined in chief on 23.10.2017. They were not cross examined by the petitioners. The petitioners filed an application for recalling these witnesses in the year 2019 by filing a petition in CMP.No.5748 of 2019. The Court below dismissed the said application by an order dated 05.11.2019. Aggrieved by the same, the present petition has been filed before this Court.

3. Heard Mr.R.Sasikumar, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing on behalf of the respondent.

4. In the considered view of this Court, even if the petitioners were not able to cross examine PW1 and PW2 on the same day when they were examined in chief, nothing prevented the petitioners to immediately move an application for recalling these witnesses for cross examination. The petitioners took their own sweet time and filed the application after two years. Therefore, the Court below was perfectly right in dismissing the application on the ground that witnesses cannot be recalled at the will and pleasure of the accused persons and it will be very difficult for the witnesses to recall their evidence after a period of two years. The present petition is liable to be dismissed even on the ground of laches. The order was passed by the Court below on 05.11.2019. The petitioners have chosen to challenge this order before this Court by filing this petition only on 15.02.2021 and there is absolutely no reason as to why the petitioners had approached this Court after nearly one year and three months. The petitioners have caused delay in each and every stage of this case. Therefore, this Court is not inclined to interfere with the order passed by the Court below.

5. In view of the above, this Criminal Original Petition is dismissed. The Court below is directed to complete the proceedings in C.C.No.161 of 2016 within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rli

To

1. The Inspector of Police
Siva Kanchi Police Station
Kancheepuram District.

2. The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.R.Sasikumar, Advocate Sr.No. 9369

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GPL(CO)

RMP(16/03/2021)