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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.20834 of 2021
and
Crl.M.P.No.11324 of 2021

1.D.Vasanthi
2.Sumathi

... Petitioners/Accused

Versus

State by Inspector of Police
K1, Chembium Police Station
Perambur, Chennai 600 011.

...Respondent/Claimant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.4355 of 2018, on the file of V, Metropolitan Magistrate, Egmore and set aside the same order dated 08.02.2021.

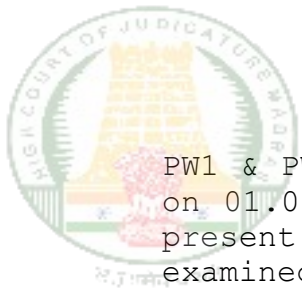
For Petitioners : Mr.V.V.Sai Ram

For Respondent : Mr. E.Raj Thilak,
Additional Public Prosecutor

O R D E R

This petition has been filed to set aside the order dated 01.02.2021 consequently restore the order dated 03.02.2020 passed in Crl.M.P.No.15027 of 2019 by the V Metropolitan Magistrate, Egmore, Chennai.

2. The petitioners/accused in C.C.No.4355 of 2018, who are facing trial, for the offence under Sections 406 & 420 IPC, had filed a petition in Crl.M.P.No.15027 of 2019 under Section 311 of Cr.P.C. The trial Court by the order dated 03.02.2020 allowed the said petition, by recalling PW1 and PW2 and permitting the petitioners to cross examine them on condition that the petitioners shall deposit a sum of Rs.1,000/- each as witness batta. Thereafter, the petitioners deposited the witness batta and the case was periodically adjourned for appearance of



PW1 & PW2. Suddenly, almost after one year, PW1 and PW2 appeared on 01.02.2021 and on that day, the petitioners' counsel was not present in the Court and witnesses PW1 & PW2 could not be cross examined. Hence, 311 of Cr.P.C., petition was closed with an observation that the petitioners/accused are not ready for cross examination of PW1 & PW2 and the case was posted for defence by 08.02.2021. On 15.02.2021, the petitioners filed a petition under Section 311 of Cr.P.C., and the same was numbered as CrI.M.P.No.4404 of 2021, which was kept pending and thereafter, the same was dismissed.

3. The grievance of the petitioners is that PW1 and PW2 are the main witnesses in the case. If their evidence is closed without cross examination, it would cause prejudice to the petitioners. Now, the case is posted on 29.11.2021 to recall and cross examination of PW8, the Investigating Officer.

4. The learned Additional Public Prosecutor has submitted that the petitioners are adopting dilatory tactics by filing one petition after another, almost all the witnesses were cross examined belatedly with delay. Thus, substantially protracting the trial hence, he strongly opposed this petition.

5. The learned Additional Public Prosecutor submitted that PW1 & PW2 hail from Chennai and they can be produced on 29.11.2021. The learned counsel for the petitioners undertakes to cross examine PW1 & PW2 without seeking further time on their appearance on 29.11.2021 or any other day.

6. Considering the submissions and a perusal of the materials, it is seen that the trial Court had earlier allowed the petition filed under 311 of Cr.P.C. for cross examination of PW1 and PW2 with condition. Subsequently, after one year, the witnesses PW1 & PW2 appeared, but on that day, petitioners' counsel was not available and cross examination could not be conducted. Now, the case is still at trial stage. Further from March, 2020, there have been disruption of the Court functioning and only restricted entry to Court was allowed due to Covid-19 Pandemic cannot be lost sight of.

7. In view of the same, the petitioners are directed to pay a sum of Rs.2,000/- to each of the witnesses. This Court is inclined to recall PW1 & PW2 permit the petitioners to cross examine these witnesses. The learned Additional Public Prosecutor appearing for the respondents to instruct the Police to ensure the presence of PW1 & PW2 on 29.11.2021 or any day after. The petitioners shall complete the cross examination of the witnesses, namely, PW1, PW2 and PW8 without delay.



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8. With the above observation and directions, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dna

To

1. Vth Metropolitan Magistrate,
Egmore.
2. -do- through The Chief Metropolitan Magistrate,
Egmore, Chennai
3. The Inspector of Police
K1, Chembium Police Station
Perambur, Chennai 600 011.
4. The Public Prosecutor
High Court, Madras.

+1CC to Mr.V.V.Sai ram, Advocate, Sr.No.60984

Crl.O.P.No.20834 of 2021
and
Crl.M.P.No.11324 of 2021

PP (CO)
K.RK. (26.11.2021)