



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.7839 of 2021
and Crl.MP.Nos.5172 & 5173 of 2021

1.S.P.Muthuvel
2.S.P.Rajendrakumar ... Petitioners

Vs.

The Inspector of Police,
Economic Offences Wing-II (EOW II),
Coimbatore,
(Crime No.1 o 2016) ... Respondent

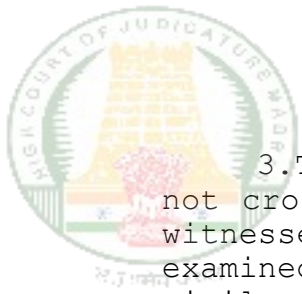
PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 29.03.2021 made in Crl.M.P.No.869 of 2021 in C.C.No.1 of 2016 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore.

For Petitioners : Mr.R.Ezhilarasan for
Mr.K.S.Karthik Raja
For Respondent : Mr.A.Damodaran
Government Advocate (Crl. Side)

ORDER

The Criminal Original Petition has been filed to set aside the order dated 29.03.2021 made in Crl.M.P.No.869 of 2021 in C.C.No.1 of 2016 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore.

2.The petitioners are A3 and A5 in C.C.No.1 of 2016 filed a petition under Section 311 Cr.P.C. to recall PW1 to PW5, PW9, PW10, PW15 to PW19, PW21, PW22 for cross examination in Crl.M.P.No.869 of 2021. The lower court by order dated 29.03.2021 had dismissed the petition, against which the present petition is filed.



3.The contention of the petitioners is that PW1 to PW5 were not cross examined by any of the accused. With regard to other witnesses except these petitioners other accused have cross examined. Further submitted that the petitioners had filed a civil suit in O.S.No.101 of 2015 pending on the file of the District Munsif, Kangeyam and some documents were handed over to the counsel who conducting the civil suit. Further submitted that PW1 to PW8 were examined during 2017, PW8 to PW18 were examined during 2018, PW19 was examined during 2019, PW20 to PW22 were examined during 2021. The prosecution has failed to produce all the witnesses and they are cause for the delay occurred. Further submitted that they undertake to abide the condition imposed by this court.

4.The learned Government Advocate (Crl. Sdie) submits that the the petitioner/accused deliberately not cross examined the witnesses though the petitioners and their counsel were present when the witnesses were examined, the petitioners now taking shelter that no cross examination done and prejudice caused cannot be accepted. It is clearly stated that they failed to cross examine the witnesses and filed the petitions before the lower Court. The petitioners had not given any reason why the witnesses to be recalled and what are the questions to be putforth. Without giving any reasons this petition cannot be entertained.

5.The victims lost money due to the deceitful act of petitioners. The accused acquired wealth and thereafter invested in various places with the the cheated money and they cannot be shown any leniency. The petitioners have successfully diverted the money received from the depositors and the entire properties purchased from the money of the victims could not be found and attached, objected and opposed the petition.

6.Considering the materials it is seen that PW1 to PW5 have not been cross examined by any of the accused as also PW9 and PW10. Considering that by cross examination only the petitioners can put forth their defence, through cross examination the evidence of the witnesses can be tested and cross examination is a fundamental right.

7.In view of the same, this Court is inclined to permit the petitioners to recall P1 to PW5, PW9 and PW10 for the purpose of cross examination. The petitioners are directed to cross examine the witnesses then and there without taking any further adjournment, on the day when the witnesses are present before the trial court. Both the petitioners are directed to pay a sum of Rs.5,000/- (Rupees five thousand only) jointly to each of the witnesses. The batta amount of Rs.35,000/- (Rupees thirty five thousand only) to be deposited within a period of one week from



the date of the normal functioning of the court. Thereafter, within a period of two week all the witnesses are to be examined and their cross examinations to be completed.

8. With the above directions, this Criminal Original Petition stands disposed of. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge,
Special Court under TNPID Act,
Coimbatore
2. The Inspector of Police,
Economic Offences Wing-II (EOW II),
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

+1CC to Mr.K.S.Karthik Raja Advocate SR No.30516

Cr1.O.P.No.7839 of 2021

PCH (CO)
PR (14/07/2021)