



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.10959 of 2021

1.Sakthivel
2.Anbazhagan
3.Anbarasu

... Petitioners

Versus

State Rep. by its
Inspector of Police,
All Women Police Station, Vaniyambadi,
Thirupathur,
Vellore District.
Cr.No.08/2012

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.M.P.No.2572 of 2021 in C.C.No.43 of 2013 on the file of Judicial Magistrate (*)**No.III**, Tirupattur, Vellore District and set aside the same and allow the petitioners/accused to cross examine P.W.1 and P.W.10.

For Petitioners: Mr.G.Krishnamurthy

For Respondent : Mr.A.Damodharan,
Government Advocate (Crl.Side)

ORDER

This petition has been filed to call for the records in C.M.P.No.2572 of 2021 in C.C.No.43 of 2013 on the file of Judicial Magistrate (*)**No.III**, Tirupattur, Vellore District and set aside the same and allow the petitioners/accused to cross examine P.W.1 and P.W.10.

2. The petitioners/accused are facing trial in C.C.No.43 of 2013 for the offence under Sections 417, 420, 294 (b) and 506(i) of IPC and Section 4 of Women Harassment Act. They filed an application under Section 311 Cr.P.C. to recall PW1 and PW10 for cross-examination. PW1 and PW10 were examined in chief on 11.06.2017 and 26.08.2016, respectively, but the



petitioners failed to cross-examine them. Nearly after 7 years, this re-call petition is filed. Thereafter, the Trial Court found that PW1 is not in a good mental condition. Hence, as per Section 33 of the Evidence Act, the evidence given by PW1 earliest in this case is taken, since now she became incapable of giving evidence. With regard to the witness PW10-Investigating Officer is concerned, he was examined in chief on 28.06.2016 and the case is of the year 2013 and the evidence of prosecution is closed. Hence, at this stage, recall petition filed under 313 cannot be entertained.

3. The learned counsel for the petitioners has submitted that the evidence of PW1 and PW10 are vital to put forward his defense. Further, the cross examination of the above witnesses would not cause prejudice as the petitioners are facing trial. The cross examination of the witnesses is only to put forward the petitioner's defense, which is a statutory right.

4. The learned Government Advocate (Crl.Side) has strongly opposed this petition stating that the case is of the year 2013 and for the past eight years, the case has been kept pending and the petitioner has dragged on the proceedings of the trial by dilatory tactics with one or another. The Lower Court clearly held that PW1 cannot be recalled due to her present state of mind and health condition. Earlier, she was healthy and deposed in chief, but the petitioners failed to cross examine her then. Now, her health condition is affected and she is unable to understand and depose. Further, the right of cross examination has already been given up by the petitioner and now at this stage, the claim of prejudice cannot be entertained. He further submitted that PW10-Investigating Officer, who now in service, can appear for cross examination, on condition that on the day of his appearance, without asking any adjournment, the cross examination has to be completed.

5. Considering the above submissions and perused the materials available on records, this Court confirms the dismissal of the recall petition with regard to PW1. Insofar as PW10 is concerned, this Court set aside the order of the Lower Court in Crl.M.P.No.2575 of 2021 dated 19.04.2021 and recall PW10 and permit the petitioners to cross examine PW10-Investigating Officer with the following conditions:

(i) The petitioners shall cross examine PW10-Investigating Officer within a period of two weeks from the commencement of normal functioning of the Court.



(ii) The petitioners are directed to pay a sum of Rs.5,000/- to the Investigating Officer/PW10, if he is retired and TA and DA are not available. If there is no necessity to pay PW10, the petitioners shall pay a sum of Rs.5,000/- to the Tirupattur Advocate Bar Association, produce the receipt before the Trial Court while cross examining PW10.

6. With the above directions, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar(CO)

Dated:07/07/2021

**(*)Nomenclature of the Lower
Court Amended as per the order
of this Court dated 26/08/2021
made in Crl.M.P.No.8334 of 2021 in
Crl.O.P.No.10959 of 2021**

Sd/-

Assistant Registrar(CO)

Dated:20/09/2021

//True Copy//

Sub Assistant Registrar

dna

To

**1.The Judicial Magistrate (*)No.III,
Tirupattur, Vellore District.**

2.The Inspector of Police,
All Women Police Station, Vaniyambadi,
Thirupathur,
Vellore District.

3.The Public Prosecutor,
High Court, Madras.

Copy to:

Tirupattur Advocate Bar Association,
Tirupattur.

+lcc to Mr.G.Krishnamurthy, Advocate, S.R.No.29426

To be substituted for
the order already
Despatched on
30/07/2021

PCH(CO)
CB(16/07/2021)
srg 20/09/2021

CRL.O.P.No.10959 of 2021