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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.11359 of 2021

and

Crl.M.P.No.6609 of 2021

1.Sathasivam

2.Moopan @ Ponnusamy

3.Sundharam

4.Ponnusamy

5.Sekar

6.Selvaraj

... Petitioners

Versus

Rajammal

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to a) stay all further proceedings in C.C.No.41 of 2011 on the file of the Judicial Magistrate Court No.I, Sankari pending disposal of the above Criminal Original Petition. b) set aside the order dated 09.04.2021 passed in CMP.No.568 of 2021 in C.C.No.41 of 2011 on the file of the Judicial Magistrate Court No.I, Sankari by allowing the above Criminal Original Petition.

For Petitioners : Mr.T.L.Thirumalaisamy

ORDER

This petition has been filed to a) stay all further proceedings in C.C.No.41 of 2011 on the file of the Judicial Magistrate Court No.I, Sankari pending disposal of the above Criminal Original Petition. b) set aside the order dated 09.04.2021 passed in CMP.No.568 of 2021 in C.C.No.41 of 2011 on the file of the Judicial Magistrate Court No.I, Sankari by allowing the above Criminal Original Petition.

2. The petitioners/accused in C.C.No.41 of 2011 are facing trial for the offence under sections 147, 148, 427, 323 and 506 (ii) IPC on the private complaint filed by the respondent. The petitioners filed a petition to recall PW1 and PW2 in CMP.No.568 of 2021. The trial Court by the order dated 09.11.2021 dismissed the same, against which, the present petition has been filed.



3. The contention of the petitioner is that the Trial Court appreciation is factually incorrect and hence, the dismissal order passed by the Trial Court, is liable to be set aside. The Trial Court failed to appreciate the fact that during the course of cross examination of PW1 on 23.09.2011, PW1 failed to co-operate with the trial and hence, further cross-examination was not conducted on that day, which is observed in the deposition of cross examination of PW1. Therefore, the petitioners/accused were forced to file a petition to recall PW1 for the purpose of further cross examination and PW1 was cross examined on 11.11.2011.

4. It is the further contention of the petitioners that since PW3 has become hostile witness, they want to further cross examine PW1 and PW2. Hence, they filed petition under 311 Cr.P.C., which was dismissed, as against which, the present petition is filed. Further, they submitted that in the year 2021, they filed a transfer petition, which was pending before Chief Judicial Magistrate, Salem and the same is now disposed of.

5. Considering the submissions and perused the material it is seen that PW1 was examined in chief on 08.07.2011 and PW2 was examined in chief on 15.07.2011 and they were not cross examined on that day. Thereafter, on a petition filed under 311 Cr.P.C., PW1 and PW2 were recalled and cross examined on 23.09.2011 and 02.2.2011, respectively. Further, again 311 Cr.P.C. petition was filed, and PW1 and PW2 were recalled and cross-examined on 11.11.2011 and 17.12.2011, respectively. PW3 was examined in chief on 29.07.2011 and cross examined on 23.12.2011 and 20.04.2012 by the complainant and PW3 was declared as hostile witness.

6. From the evidence of the witnesses, it is seen that the petitioners were given several opportunities, to recall and cross examine the witnesses PW1 and PW2. The case is pending from the year 2011 and it is almost 10 years over and the reasons given by the petitioners to recall the said witnesses are not proper and sustainable. Further, the reason stated by the petitioners that PW3 turned hostile and hence, they want to further cross examine PW1 and PW2 is not proper. The evidence is completed and the case is at the stage of arguments and now, this petition is filed only to protract the proceedings. Hence, this Court is of the view that the Lower Court has rightly dismissed the above petition.

7. In view of the same, this Court is not inclined to allow this petition. Since the case is pending for more than 10 years, the trial Court is directed to hear the arguments and pass judgment at the earliest.



8. With the above observations and directions, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS VII)

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//True Copy//

Sub Assistant Registrar

dna

To

The Judicial Magistrate Court No.I, Sankari.

+lcc to Mr.T.L.Thirumalaisamy, Advocate SR.No.31472

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and

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AK II(CO)

B.VC(05.08.2021)