



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.14369 OF 2021

AND

CRL.M.P.NO.7833 OF 2021

1.A.Arunkumar
2.Dilli

... Petitioners

Vs.

State Rep. by,
Inspector of Police,
J-6, Thiruvanmiyur Police Station,
Chennai.
(Cr.No.1974/2014).

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 09.07.2021 in CrI.M.P.No.7561 of 2021 in S.C.No.377 of 2017 on the file of the learned Sessions Judge, Magalir Neethimandram, Allikulam Complex, Chennai and direct the Trial Judge to recall the witnesses, PW-4, PW-6, PW-7 and PW-9 for cross-examination by the defence.

For Petitioners : Mr.R.Balachanderan

For Respondent : Mr.A.Damodaran,
Government Advocate (CrI. Side)



ORDER

This Criminal Original Petition has been filed to set aside the order, dated 09.07.2021, made in CrI.M.P.No.7561 of 2021 in S.C.No.377 of 2017 passed by the learned Sessions Judge, Magalir Neethimandram, Allikulam, Chennai (trial Court).

2.The petitioners, who are the accused in S.C.No.377 of 2017 have filed a petition in CrI.M.P.No.7561 of 2021 in S.C.No.377 of 2017 to recall the witnesses PW4, PW6, PW7 and PW9 before the trial Court. The trial Court, by order, dated 09.07.2021 dismissed the petition, against which the present petition.

3.The learned counsel for the petitioners submitted that the petitioners are facing charges for offence under Sections 498(A), 304(b) @ 306 IPC. In this case, PW4 is the witness to Observation Mahazar; PW6 is the incharge of the Women Hostel, where the deceased was stayed; PW7 is the Sub Inspector of Police, All Women Police Station, Madipakkam and PW9 is the Post-Mortem Doctor. The cross examination of these witnesses could not be carried out and the other witnesses were cross examined then and there. Now the accused were questioned under Section 313 Cr.P.C., and the case is at the stage of argument. The learned counsel further submitted that the petitioners are facing serious charges. Unless these witnesses are recalled and cross examined, the defence of the accused could not be putforth. The Court below, without considering these aspects, dismissed the petition and hence, he prayed for setting aside the order.

4.The learned Government Advocate (CrI. Side) appearing on behalf of the respondent Police strongly opposed this petition and submitted that in this case, PW4, the witness to the Observation Mahazar, examined in chief on 29.08.2018. PW6, incharge of the Women Hostel examined in chief on 19.09.2018. PW7, the Sub Inspector of Police, All Women Police Station, examined in chief on 20.11.2018. PW9, the Post-Mortem Doctor, examined in chief on 19.11.2020. Now, PW7 due to ill-health voluntarily retired from the service and her whereabouts is not known and PW9 is working in the Government Hospital, Thoothukudi and he is assigned to treat COVID-19 patients. All these four



witnesses were examined in chief much earlier. Now, the case is at the stage of argument and hence, the petition under Section 311 Cr.P.C., filed by the petitioners is only to protract the trial. In this case, the occurrence had taken place on 11.11.2014 and it is almost seven years now. The petitioners have been successfully dragging the proceedings all these years and not allowing to complete the trial. Thus, the trial Court had passed well reasoned order setting out all the reasons and dismissed the petition.

5.It is seen that the occurrence is said to have taken place in the year 2014. It is almost seven years lapsed and the case is at the stage of arguments. If this Court orders to recall the witnesses, it would further affect the progress of the trial. Hence, this Court is not inclined to interfere with the order of the trial Court and the same is confirmed. This Criminal Original Petition is, accordingly, dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

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To

1. The Sessions Judge,
Magalir Neethimandram, Allikulam Complex,
Chennai.
2. The Inspector of Police,
J-6, Thiruvanmiyur Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.14369 of 2021

GPL(CO)
RLP(27/09/2021)