



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.15657 of 2021

1. Ramasamy
2. Dinesh
3. Krishnasamy ... Petitioners

Versus

State rep. by,
The Sub Inspector of Police,
North Police Station, Tiruppur,
Tiruppur District. ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside order dated 08.03.2021 passed in the Crl.M.P.No.511 of 2020 in C.C.No.266 of 2018 pending on the file of the Judicial Magistrate - I, Tiruppur and there by allow the petitioners to cross examine the PW1 and PW2.

For Petitioners : M/s.S.P.Meenakshi Sundaram.

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

ORDER

This Criminal Original Petition has been filed to set aside the order dated 08.03.2021 passed in Crl.M.P.No.511 of 2020 in C.C.No.266 of 2018.

2. The contention of the petitioners is that the petitioners are accused in C.C.No.266 of 2018 on the file of Judicial Magistrate No.1, Tiruppur, and facing trial for the offences under Sections 294(b), 353, 506 (i) of IPC. They had filed a petition in Crl.M.P.No.511 of 2020 under Section 311 Cr.P.C. before the lower Court to re-call PW1 and PW2, who are Surveyor and Assistant Surveyor. The lower Court, by an Order dated 08.03.2021, dismissed the same. Against which, the present petition.

3. The learned counsel for the petitioners would submit that in this case, P.W.1 and P.W.2 are important witnesses,



however, they could not be cross examined on 04.12.2018. Thereafter, within 3 or 4 months due to Covid-19 pandemic situation, all the Courts were closed and subsequently, it was resumed partially and only bail and important matters were taken up and trial had not progressed. Though initially, the petitioner had failed to cross examine PW1 and PW2, subsequently, the delay is only due to pandemic situation and not due to the petitioner. He would further submit that the petitioners/accused are now ready and willing to make deposit of Rs.25,000/- each.

4. The learned Government Advocate (Crl. side) appearing for the respondent would submit that the petitioner and the de-facto complainant/PW3 in C.C.No.266 of 2018 are adjacent land owners and there was some dispute with regard to the boundaries of their property. While being so, without notice to the petitioners, P.W.1/Surveyor and P.W.2/ Assistant Surveyor had come to survey the land and to mark the boundaries, which was objected to by the petitioners and hence, the case has been registered. Totally, there are 8 witnesses in this case. Apart from PW1 & PW2, on 04.12.2018, other witnesses have been cross examined then and there without a delay of more than a year. Now, all the witnesses on the side of prosecution has been completed and the accused had been questioned under Section 313 Cr.P.C and now, the case is posted for defence side witness. At this stage, now, the petitioners have filed this petition only with an intention to drag on the proceedings.

5. This Court considered the submissions made on either side and perused the materials available on records carefully.

6. On enquiry, it is found that P.W.1 and P.W.2, who are Surveyor and Assistant Surveyor, are still in service and working in Tiruppur District. Since the charges against the petitioners are under Section 353 and 506(i) of IPC, the cross examination of P.W.1 and P.W.2 is necessary to put forth their defence. Further, the petitioners had filed the petition before the Lower Court as early as on 31.01.2020. But, the order has been passed only on 08.03.2021, nearly, after a lapse of one year and 3 months and no reason was given for the delay. Finding that the delay for re-calling the witnesses is because of the pandemic situation, and also the fact that re-calling P.W.1 and P.W.2 for the purpose of cross examination is vital to put forth the defence, this Court is inclined to allow the petition.

7. Accordingly, this Criminal Original Petition is allowed and the order passed by the Judicial Magistrate-I, Tiruppur in Crl.M.P.No.511 of 2020 in C.C.No.266 of 2018 is set aside with the following conditions:



(i) P.W.1 and P.W.2 are ordered to be recalled for the purpose of cross examination on payment of costs of Rs.25,000/- (Rupees Twenty Five Thousand only) each to the Mariyala Kuzhanthaigal Nala Kapagam, Panneer Panthal, Tirupur. The deposit receipt to be produced before the Trial Court, before filing petition/memo for recall.

(ii) The cross examination of P.W.1 and P.W.2 would be done on the same day when they appear before the Lower Court without seeking any further date.

(iii) It is made clear that no extension of time would be given for any reason either on payment of costs or for cross examining the witnesses.

(iv) If the petitioners are unable to pay the money and cross examine the witnesses, viz., P.W.1 and P.W.2, the order of this Court would automatically stand cancelled.

Since the matter is pending from the year 2018, the trial Court is directed to complete the trial proceedings, preferably, within one month from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Sub Inspector of Police,
North Police Station, Tiruppur,
Tiruppur District.
2. The Public Prosecutor,
High Court, Madras.
3. The Mariyala Kuzhanthaigal Nala Kapagam,
Panneer Panthal,
Tiruppur.

+1cc to Mr.S.P.Meenakshi Sundaram, Advocate, S.R.No.45054

CRL.O.P.No.15657 of 2021

RLD(CO)
HS(13/09/2021)