



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.Nos.17773, 17777 & 17780 of 2021
and
Crl.M.P.Nos.9748, 9750 & 9751 of 2021

G.Karthikeyan ... Petitioner in Crl.O.P.No.17773 of 2021 /
Accused - 2

P.Narayanan ... Petitioner in Crl.O.P.No.17777 of 2021 /
Accused - 2

K.Natarajan ... Petitioner in Crl.O.P.No.17780 of 2021 /
Accused - 1

Versus

State by Inspector of Police,
CCIW, CIO, CH East,
Crime No.01/1999.
(U/s 408, 409 & 477(A) of IPC)

... Respondent in all cases / Complainant

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 04.09.2021 made in Crl.M.P.Nos.4439, 4440 & 4420 of 2021 in C.C.Nos.214, 211 & 212 of 2008 respectively on the file of the learned Judicial Magistrate No.II, Poonamalle and consequently allow the petition filed under Sec.311 to recall the PW-1 to PW4 and PW-6 for subjecting them to cross examination in C.C.Nos.214, 211 & 212 of 2008 on the file of the learned Judicial Magistrate No.II, Poonamalle.

In all cases:

For Petitioners : Mr.N.Nithianandam

For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. Side)

COMMON ORDER

All these Criminal Original Petitions have been filed to set aside the orders, dated 04.09.2021 in Crl.M.P.Nos.4439, 4440 &



4420 of 2021 in C.C.Nos.214, 211 & 212 of 2008, passed by the learned Judicial Magistrate No.II, Poonamallee.

2.The learned counsel for the petitioners submitted that the petitioners have filed petitions under Section 311 Cr.P.C., in CrI.M.P.Nos.4439, 4440 & 4420 of 2021 in C.C.Nos.214, 211 & 212 of 2008 on 04.09.2021, in which the trial Court on the same day, dismissed the petitions on the ground of inordinate delay. The learned counsel further submitted that the delay is not due to the petitioners. For the past ten years, the case bundles before the trial Court were found missing, due to which, the cases were periodically adjourned causing great hardship to the petitioners all these years. Contrary to the same, the trial Court erroneously attributing the delay in filing the petitions under Section 311 Cr.P.C., on the petitioners, which is not proper. Finally, the case bundles retraced in the year 2020. In support of his submission, the learned counsel for the petitioners relied on the decision of the Hon'ble Apex Court in the case of "The State Represented by the Deputy Superintendent of Police Versus Tr.N.Seenivasagan in Special Leave to Appeal (CrI.)Nos.3104-3105/2020, dated 24.06.2019", wherein it had held that 'an application under Section 311 Cr.P.C could not be rejected on the sole ground that the case had been pending for an inordinate amount of time'. Hence, he prayed for setting aside the orders of the trial Court, dated 04.09.2021.

3.Per contra, the learned Additional Public Prosecutor appearing for the respondent Police submitted that in C.C.No.211 of 2008, totally three accused; in C.C.No.212 of 2008, totally two accused and in C.C.No.214 of 2008, totally two accused. A1 initially pleaded guilty and he was convicted by the trial Court on 30.09.2009, as against which, appeal was filed before the learned II Additional District and Sessions Judge, Thiruvallur in C.A.Nos.41 to 44 of 2009. The learned II Additional District and Sessions Judge, Thiruvallur, by judgment, dated 08.06.2010 confirmed the judgment of the trial Court. Thereafter, the bundles were managed to be held in one place or other and no trial could be proceeded for all these years. Finally, the bundle could be traced out only in the year 2020. He further submitted that no surcharge proceedings initiated against the petitioners sofar.

4.This Court has considered the rival submissions and perused the materials available on records.

5.In C.C.No.211 of 2008, totally 6 witnesses (PW1 to PW6); in C.C.No.212 of 2008, totally 5 witnesses (PW1 to PW5) and in C.C.No.214 of 2008, totally 8 witnesses (PW1 to PW8). On perusal of the statements of these witnesses, it is seen that the entire allegation seems to be against the Secretary, who was already



convicted by the trial Court, which was confirmed by the lower appellate Court. As far as these petitioners are concerned, one witness has stated that the petitioners were present at the time of fraud played by A1. Other than that, nothing against the petitioners. Admittedly, no liability or surcharge proceedings against the petitioners. Hence, again recalling the said witnesses would serve no purpose and it would further delay the outcome of the trial.

6. In view of the same, this Court is not inclined to set aside the orders, dated 04.09.2021 in Crl.M.P.Nos.4439, 4440 & 4420 of 2021 in C.C.Nos.214, 211 & 212 of 2008 passed by the learned Judicial Magistrate No.II, Poonamallee and the same is hereby confirmed. Accordingly, these Criminal Original Petitions are dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court No.II,
Poonamallee.
2. The Inspector of Police,
CCIW, CIO, CH East,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

CRL.O.P.Nos.17773, 17777 & 17780 of 2021

CA[co]
NSK 30/12/2021