

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.01.2021

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P.No.20781 of 2020

1. Selvarasu

2. Vinothkumar

3. Murugan @ Balasubramani

4. Bass @ Sivasubramani

...Petitioners

Vs.

The Sub Inspector of Police,
Valavanur Police Station,
Villupuram District.

...Respondent

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 15.12.2020 in Crl.M.P.No.319 of 2020 in CC.No.9 of 2019 on the file of the Additional Mahila cum Judicial Magistrate, Villupuram.

For Petitioners : Mr.K.Sudhakar

For Respondent : Mr.M.Mohamed Riyaz
: Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioners under Section 311 of Cr.P.C. to recall PW1 to PW4 for cross-examination.

2. It is seen from records that the FIR was registered in the year 2013 in Crime No.828 of 2013 for offences under Section 294(b), 323,324 and 506(ii) of IPC. PW1 to PW4 were examined in chief on 17.10.2016. Initially, the case was tried by the learned Judicial Magistrate-II, Villupuram and subsequently, the case has been transferred to the file of the Additional Mahila Court, Villupuram. Since the petitioners did not cross examine the witnesses, their evidence was closed.

3. The petitioners filed an application for recall of PW1 to PW4 for cross examination and the said application was allowed by the

Court below by an order dated 05.02.2019. The petitioners failed to avail this opportunity and those witnesses were not cross-examined and therefore, the evidence was closed.

4. The petitioners thereafter filed one more application under section 311 of Cr.P.C. to recall PW1 to PW4 for cross examination and the same was dismissed by the Court below by an order dated 15.12.2020.

5. The learned counsel for the petitioners submitted that the petitioners were not able to cross-examine PW1 to PW4 only due to the boycott that was called by the Bar Association and for the fault of the counsel, the petitioners should not be victimized. The learned counsel further submitted that the petitioners are willing to cross examine the witnesses on the same day, they are present before the Court below and they are willing to abide by any condition imposed by this Court.

6. Per contra, the learned Additional Public Prosecutor appearing on behalf of respondent Police submitted that the case was registered seven years back and PW1 to PW4 were examined four years back and the petitioners are seeking for cross-examination of those witnesses in the year 2021. The learned Additional Public Prosecutor submitted that the petitioners having missed the bus when an opportunity was given by the Court below to cross examine the witnesses, cannot be again given the liberty to once again recall PW1 to PW4 for cross examination. It was submitted that the accused persons in this case were absconding and a Non-Bailable Warrant was issued against them and that also caused delay in the progress of the criminal case before the Court below.

7. This Court has carefully considered the submissions on either side and materials available on record.

8. This Court does not find any illegality or infirmity in the

order passed by the Court below. The main ground that has been urged by the petitioners is that the petitioners were not able to cross-examine PW1 to PW4 due to the Advocates' boycott on the date on which, those witnesses were present before the Court. This Court is not able to satisfy itself on the ground raised by the petitioners. The petitioners failed to cross examine PW1 to PW4 when they were examine in chief in the year 2016. Thereafter, the petitioners were given an opportunity in the year 2019 to cross-examine PW1 to PW4 by allowing the application filed by them under Section 311 of Cr.P.C. This was also not availed by the petitioners and they failed to cross-examine PW1 to PW4. The Advocate boycott can never be a ground to recall the witnesses. The witnesses cannot be summoned by a Court at the beck and call of the accused persons and it will be a futile exercise to cross-examine the witnesses after nearly four years, after they were examined in chief. Obviously, they will not remember the exact particulars of the case due to diminishin memory by lapse of time.

9. This Court does not find any ground to interfere with the order passed by the Court below and accordingly, this Criminal Original Petition is dismissed. The Court below is directed to complete the proceedings in C.C.No.09 of 2019 on the file of the Additional Mahila cum Judicial Magistrate, Villupuram within a period of three months from the date of receipt of copy of this order.

05.01.2021

Speaking/Non Speaking order

Index : Yes/No

Internet: Yes/No

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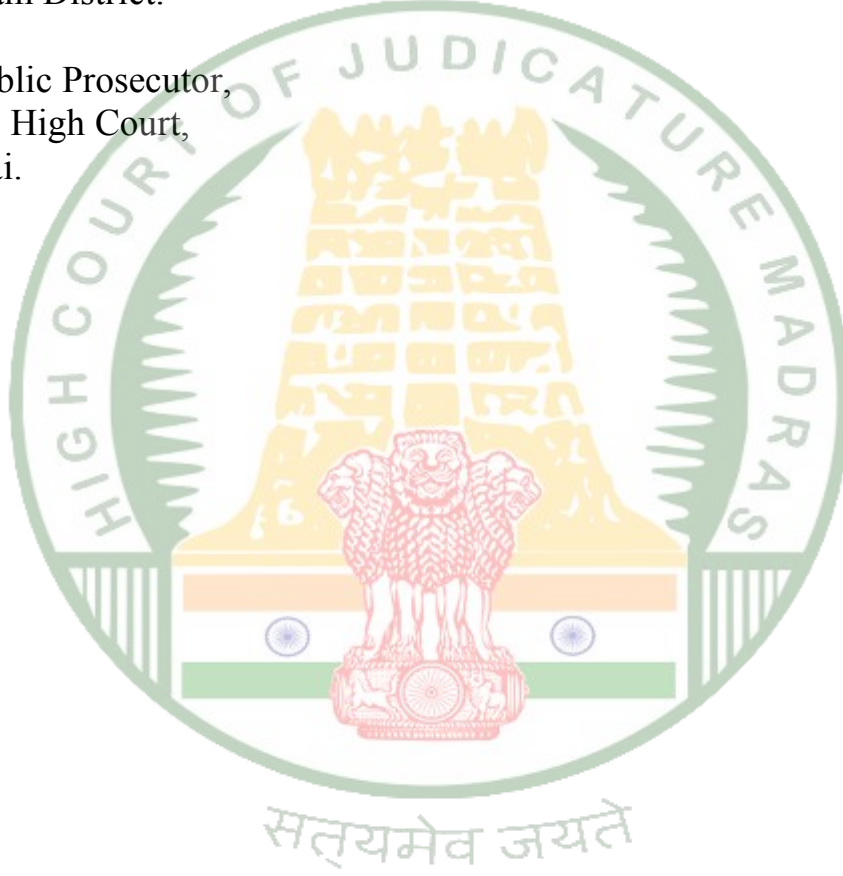
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To

1. The Additional Mahila cum Judicial Magistrate,
Villupuram

2. The Sub Inspector of Police,
Valavanur Police Station,
Villupuram District.

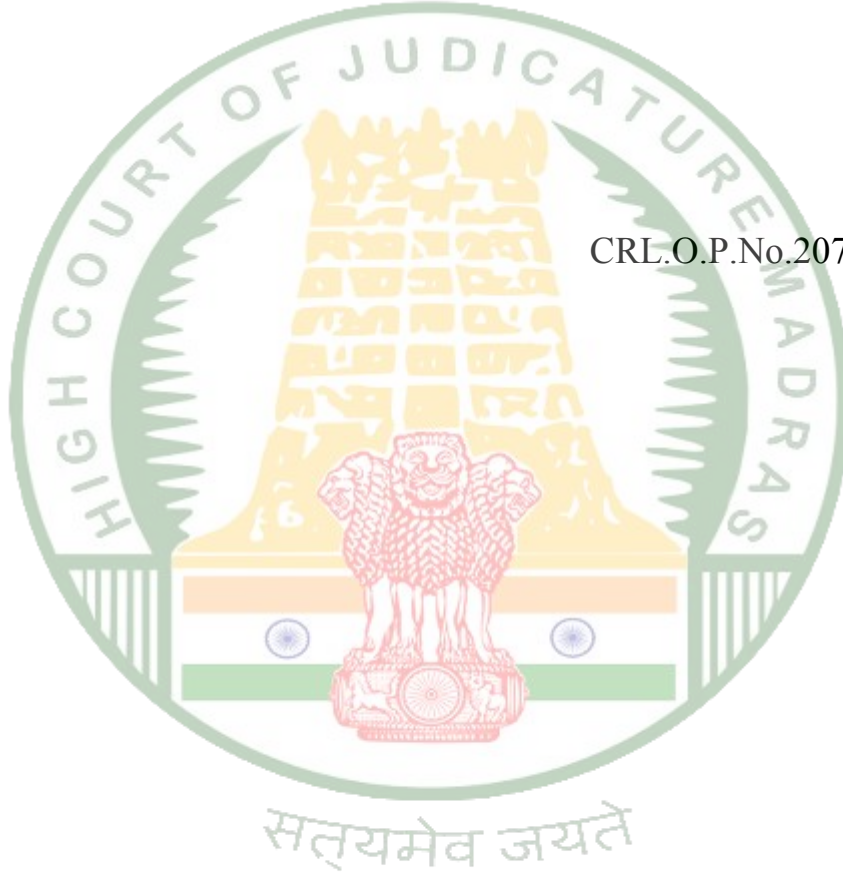
3. The Public Prosecutor,
Madras High Court,
Chennai.



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N.ANAND VENKATESH,J

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