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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.NO.10654 OF 2017

AND

CRL.M.P.NO.7018 OF 2017

1. Anguraj,
2. Selvaraj,
3. Irusan,
4. Narasappan,
5. Anbalagan,
6. Ramu

...Petitioners

Vs.

The Inspector of Police,
Mecheri Police Station,
Mecheri, Salem District.

... Respondent

PRAYER:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings of the order in C.M.P.No.512 of 2015 in S.C.No.231 of 2014 on the file of the Sub-ordinate Judge, Mettur, Salem District to set aside the same.

For Petitioners : Mr.R.Murugabharathi

For Respondent-1 : Mr.E.Rajthilak
(Counsel for Govt. (Crl. Side))

O R D E R

This Criminal Original petition has been filed under Section 482 Cr.P.C. seeking for to call for the records relating to the proceedings of the order in C.M.P.No.512 of 2015 in S.C.No.231 of 2014 on the file of the Sub-ordinate Judge, Mettur, Salem District and to set aside the same.

2. The case of the petitioners is that on 28.11.2012 at about 7.03 p.m. opposite to Pattappan Koil, Mallikuntham Kattuvalavu situated on the Mecheri to Pennagaram lies within the limits of Mecheri Police Station, the accused A-1 to A-6



unlawfully joined together with the common object to cause damage to the bus bearing No.TN 29 N 1706 belonged to the TNTSTC when the driver of the Bus was driving in the aforesaid place. Hence, the driver of the bus made complaint before the Mecheri Police Station against the petitioners stating that the accused A1 was holding Thadi in his hands and the accused A-2 to A6 were holding stones in the hands and further they shouted and damaged the Bus. In the result, the A-1 had broken front wind screen glass with Thadi and others accused had broken front wind screen with stones of the aforesaid bus. Therefore, TNTSTC Bus sustained loss to the tune of Rs.5,000/-. Hence, the respondent police have registered case against the accused A-1 to A-6 in Crime No.765 of 2012 for the offence punishable under Sections 147, 148, 149 of I.P.C. and 3(i) of TNPPDL Act, 1992. Further, the respondent police have filed the Charge Sheet against the petitioners for the punishable under Sections 147,148,149 of I.P.C. and 3(i) of TNPPD Act, 1992. The case is under Trail in S.C.No.231 of 2014 before the Sub-ordinate Court, Mettur, Salem District wherein the witnesses P.W.1 and P.W.2 were examined and it has been posted for further examination of other witnesses. It has been further submitted that during the examination of the witnesses P.W.1 and P.W.2 on 09.06.2015, they were not cross examined by the petitioners due to the personal inconvenience of their counsel. As such the petitioners have filed the petition in C.M.P.No.512 of 2015 in S.C.No.231 of 2014 under Section 311 of Cr.P.C. before the Sub-ordinate Court, Mettur, Salem District to recall the witnesses of P.W.1 and P.W.2 in connection with the case in S.C.No.231 of 2014. The same was dismissed by order dated 07.11.2016. Hence, this Criminal Original Petition is filed to set aside the aforesaid order.

3. The learned counsel for the petitioner submitted that the said re-call petition under Section 311 of Cr.P.C. to avail their just opportunity to cross examination of P.W.1 and P.W.2. It is just and necessary to allow the petition and if an opportunity is denied by the Court, the petitioners are unable to establish their defence case. Further, it has been submitted that those two witnesses are not cross examined on defence side, they will suffer and it will not meet out the ends of Justice.

4. The learned counsel further submitted that the witnesses P.W.1 and P.W.2 were examined in Chief on 09.06.2015 and the petitioners filed the Re-call petition on 12.10.2015. It makes clear that the petitioners have filed the Re-call petition within four months and it has not been filed to drag on the proceedings. However, the Court below dismissed the petition filed under Section 311 Cr.P.C. stating that according to the directions of the Hon'ble Apex Court, in a criminal case the witnesses ought to have cross examined on the day itself. In this case, if the petition will be allowed, the witnesses may have lost their



knowledge about the case or may not support the prosecution. Further, the Court below has not considered the provision of under Section 311 Cr.P.C. -" Power to summon material witness, or examine person present: Any Court may, at any stage of any inquiry, trial or other proceeding under this code, summon any person as a witness, or examined any person in attendance, though not summoned as a witness, or re-call and re-examin, any person already examined; and the Court shall summon and examine or re-call and re-examined any such person if his evidence appears to it to be essential to the just decision of the case." Hence, this Court may pleased be to allow this petition by giving one more chance to prove the innocent of the petitioners enabling to deliver just decision of the case and further the petitioners will abide any conditions imposed by this Court.

5. The learned Government Advocate (Crl. Side) submitted that there is no necessity in giving them a chance to cross examine the P.W.1 and P.W.2 since the incident of the year 2012 and it is not known that whether the witnesses P.W.1 and P.W.2 who were chief examined, are available in the Transport Department or not. Further, the case has been transferred to some other Court. Hence, this petition is liable to be dismissed.

6. On a perusal of the records, it is seen that the witnesses P.W.1 and P.W.2 were examined in Chief on 09.06.2015 and the petitioners filed the Re-call petition on 12.10.2015 in view of the personal inconvenience of the counsel for the petitioner. It is admitted fact that the petitioners cannot prove their side without cross examining the witnesses P.W.1 and P.W.2. After completion of the cross examination by the petitioner's side, the Court below can decide the case in a proper manner. Further, in view of the personal reasons of the counsel for the petitioners, the petitioners should not suffer for not examining the P.W.1 and P.W.2. and hence this Court is inclined to allow the petition by giving one more chance to the petitioners to cross examine the P.W.1 and P.W.2. with cost of Rs.3,000/- payable by each of the petitioners to the Chief Minister's Covid Relief Fund by 26.07.2021. The petitioner shall produce the receipt of the payment before the Court below along with the copy of this order.

7. The petitioners are directed to engage their counsel to cross examine the P.W.1 and P.W.2 for two days only as scheduled dates fixed by the Court below without seeking any adjournments. The Court below shall fix dates accordingly for the cross examination of PW.1 and P.W2 after calling upon them by giving sufficient opportunities and other witnesses shall be cross examined on the same day, if it is not done. After cross examinations, the case shall be disposed of within a period of four months from the date of cross examinations.



8. In view of the above, this Criminal Original petition is allowed with costs. Consequently, connected miscellaneous petition is closed if any.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

lbm

To

1. The Sub-ordinate Judge,
Mettur, Salem District
2. The Inspector of Police,
Mecheri Police Station,
Mecheri, Salem District.
3. The Public Prosecutor,
Madras High Court.

+1cc to Mr.R.Murugabharathi, Advocate, S.R.No.32209

CRL.O.P.NO.10654 OF 2017 AND
CRL.M.P.NO.7018 OF 2017

SR-II(CO)
CS/23/07/2021