



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 16.06.2021

DATE ON WHICH PRONOUNCED : 23.06.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.7803 of 2021

and

Crl.MP(MD)No.3975 of 2021

1.S.Jeeva
2.S.Dharani

... Petitioners/Petitioners/
Accused No.1 & 2

Vs.

The State rep by
The Deputy Superintendent of Police,
Oddanchathiram Sub-Division,
Sempatty Police Station,
Cr.No.882 of 2020.
Dindigul District.

... Respondent/Respondent
Complainant

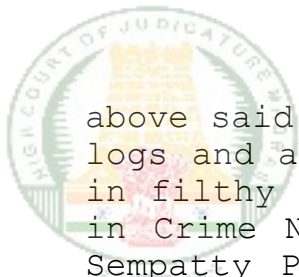
Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for records pertaining to the order passed by the learned Principal Magistrate/Juvenile Justice Board, Dindigul in Crl.MPNo.45 of 2021 dated 01.04.2021 in J.C.No.33 of 2020 and set aside the same and to permit the petitioners to cross examine the prosecution Witness Nos.1 to 4.

For Petitioners : Mr.S.Balakarthick
For Respondent : Mr.R.M.Anbu Nithi,
Additional Public Prosecutor.

ORDER

This Criminal Original Petition is filed to quash the order passed by the learned Principal Magistrate/Juvenile Justice Board, Dindigul, in Crl.MPNo.45 of 2021, dated 01.04.2021, in J.C.No.33 of 2020 and to permit the petitioners to cross examine the prosecution Witness Nos.1 to 4.

2. The case of the prosecution is that on 22.06.2020, at about 09.20 p.m., when the defacto complainant was returning home in his two wheeler, one Kesavan, Murugan and Seenu @ Dineshkumar had parked their vehicles in the road and also consuming liquor. When the same was questioned by the defacto complainant, they scolded the defacto complainant by his caste name. Thereafter, the relatives of the



above said persons and the petitioners herein came there with wooden logs and abused the defacto complainant, his wife and his relatives in filthy language and also criminally intimidated them. So, a case in Crime No.882 of 2020 was registered against the accused by the Sempatty Police Station, Dindigul and the same was transferred to the respondent herein, for investigation. Since the petitioners being juveniles, the respondent police filed a charge sheet before the Juvenile Justice Board, Dindigul, for the offences under Sections 147, 294(b), 506 (i) of IPC r/w 3 (1) (r) (s), 3 (2) (Va) SC/ST (POA) Amendment Act 2015, and the same was taken on file in J.C.No.33 of 2020. P.W.1 to P.W.4 were examined as in chief on 25.02.2021. Even though, on the that of chief examination, the petitioners counsel appeared before the Trial Court, he has omitted to cross examine the witnesses. Hence, the petitioners filed a petition before the learned Principal Magistrate/Juvenile Justice Board, Dindigul, in Crl.MP.No.45 of 2021 in J.C.No.33 of 2020, under Section 311 Cr.P.C to re-call the witnesses P.W.1 to P.W.4 for cross-examination. That petition was dismissed by the learned earned Principal Magistrate/Juvenile Justice Board, Dindigul, dated 01.04.2021. Hence, this petition.

3.Heard both sides.

4. P.Ws.1 to 4 were examined in chief on 25.02.2021. The learned counsel for the petitioner was not in a position to cross-examine the witnesses. So, he filed an application on 04.03.2021, under Section 311 Cr.P.C to re-call the witnesses for cross-examination. That petition came to be dismissed by the learned Principal Magistrate/Juvenile Justice Board, Dindigul, on 01.04.2021, mainly on the ground that the opportunity was not properly utilised by the petitioners and cross-examination cannot be deferred beyond the examination of the other witnesses. He has also relied upon the judgment of the Hon'ble Supreme Court in **Vinod Kumar Vs State of Punjab**.

5. The learned counsel for the petitioner at the time of arguments would submit that only due to the inability on the part of the learned counsel for the petitioners to get instruction from the juveniles, he was not in a position to cross-examine the witnesses, on the date of chief examination and apart from that, there is no lethargic attitude on the part of the learned counsel for the petitioner. When such a plea is taken, it is the duty of this Court to see that a fair trial requires due participation of the accused and the prosecution and the inability, on the part of the counsel for the petitioner to get proper instruction cannot be a ground for non-cross-examination. But, in the facts and circumstances of the case, I am of the considered view that the petitioners being the juvenile, must be given one more opportunity, to cross-examine the witnesses.



6. Moreover, it may not be proper on the part of the Juvenile Justice Board to render justice on the basis of the unchallenged testimony of witnesses. The purpose of cross examination has been elaborately dealt with in many cases.

7. So, I am of the considered view that one more opportunity shall be given to the petitioners to cross-examine the witnesses. The petitioners, being juveniles, it may not be proper on the part of this Court to impose costs. But, the petition is liable to be allowed and the order passed by the learned Principal Magistrate/Juvenile Justice Board, Dindigul, dated 01.04.2021, is set aside with the following conditions:-

(i) The learned Principal Magistrate/Juvenile Justice Board, Dindigul must fix a date for cross-examination of P.W.1 to P.W.4 by the petitioners within 15 days from the date of resumption of normal work and shall send summons to the witnesses.

(ii) On the date fixed, the petitioners must cross examine the witnesses without fail. If any failure is noticed, then the right of cross examination of the witnesses will be lost.

8. With the above direction, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Principal Magistrate/Juvenile Justice Board,
Dindigul.
2. The Deputy Superintendent of Police,
Oddanchathiram Sub-Division,
Sempatty Police Station,
Dindigul District.



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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KB(02.07.2021) 4P 4C