



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.10.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

CrI.O.P. (MD) No.16799 of 2021

and

CrI.M.P. (MD) No.9079 of 2021

1.Don Bosco

2.Kishore Baiju

... Petitioners/Petitioners/

Accused 1 & 2

Vs.

The Sub Inspector Police,
Kottricode Police Station,
Kanniyakumari District.

... Respondent/Respondent /
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records to set aside the order passed by the Learned Judicial Magistrate No.I Court, Padmanabapuram in C.M.P.No.7749/2021 in C.C.No.288/2018 dated 08.10.2021.

For Petitioners : Mr.A.Balakrishnan
For Respondent : Mr.RMS.Sethuraman
Additional Pubic Prosecutor

ORDER

This petition is filed seeking an order to set aside the order passed in C.M.P.No.7749 of 2021 in C.C.No.288 of 2018, dated 08.10.2021 on the file of the learned Judicial Magistrate No.I, Padmanabapuram.

2.The petitioners are facing charge under Section 323, 324, 294 (b) and 506(ii) of IPC and the crime is of the year 2017 and the case is of the year 2018. P.W1 to P.W5 have been examined in chief as early as 08.04.2019. After the long gap of 2 years, this petition has been filed seeking recalling of the aforesaid witnesses for the purpose of cross-examination. Finding that no proper reason has been mentioned in the recall petition and taking note of the conduct of the petitioners in filing the similar petition with regard to C.C.No.328 of 2019 on the file of the very same Court, it came to be dismissed.

<https://hcservices.ecourts.gov.in/hcservices/> 3.No doubt, there is no proper reason mentioned by the



petitioners in the petition for recalling the aforesaid witnesses. However, it is seen that the petitioners are facing charge under Section 324 of IPC. So, without cross-examining the injured witnesses, dispose of the matter may not be possible. On the sole ground itself, I am of the considered view that one more opportunity may be given to the petitioners for the purpose of cross-examination of the witnesses on the following conditions:-

i) Let the petitioners deposit a sum of Rs.2,000/- as cost each to the aforesaid witnesses within a period of 15 days from the date of receipt of a copy of this order before the trial Court.

ii) On such deposit, the trial Court shall recall the aforesaid witnesses by fixing a particular date for the purpose of cross-examination.

iii) On the date so fixed, the petitioners must cross-examine all the aforesaid witnesses without fail. If any failure is noticed, the further right to cross-examine the witnesses will be forfeited.

4. With the aforesaid directions, this petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

mm

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 Judicial Magistrate No.I, Padmanabapuram,
Kanyakumari.

2. The Sub Inspector Police,
Kottricode Police Station,
Kanyakumari District.



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

+1cc to A.Balakrishnan, Advocate Sr.No. 33313 dated 29.10.2021

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Crl.O.P. (MD)No.16799 of 2021
29.10.2021

NSN (CO)
SB(10.12.2021) 3P 5C