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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.58 of 2022
and
Crl.M.P.No.597 of 2022

1. Mahaveerchand Katariya
2. Kausalya Bai
3. Narendra Kumar
4. Ashok Kumar
5. Aarthi

... Petitioners/Accused

Vs.

Station House Officer,
All Women Police Station,
Villupuram,
Crime No.691 of 2007.

... Respondent/Complainant

PRAYER: The Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the judgment and order passed in Crl.M.P.No.982 of 2021 in C.C.No.02 of 2019 dated 17.12.2021 on the file of the learned Judicial Magistrate, Additional Mahila Court, Villupuram, dismissing the petition under Section 243 of the Code of Criminal Procedure.

For Petitioners	:	Mr.P.Magesh
For Respondent	:	Mr. S.Sugendran, Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Petition has been filed by the petitioner/ accused against the dismissal of the petition in Crl.M.P.No.982 of 2021 in C.C.No.02 of 2019 dated 17.12.2021 on the file of the learned Judicial Magistrate Additional Mahila Court, Villupuram filed by them seeking permission to examine the defence witnesses and mark the documents.



2. The petitioners are facing trial in C.C.No.02 of 2019 pending on the file of the learned Judicial Magistrate Additional Mahila Court, Villupuram for the offences punishable under Sections 498A, 406, 342 of IPC and Section 4 of the Dowry Prohibition Act on the complaint given by the daughter-in-law of the first and second petitioners. The de facto complainant was examined as PW1. She had deposed that she is suffering from Cervical Spondylitis due to an assault by her husband. It is the specific case of the petitioners that the de facto complainant has been suffering from Cervical Spondylitis for a long time and she had been taking treatment for the same from one Dr.T.K.Muthaiyan, from Villupuram and Dr.B.Ganesh, from Sowcarpet, Chennai. The first petitioner had examined himself as DW1 and during such examination, he sought permission of the court to mark the medical records (prescription and notes/records of examination done by the said Doctors). However, the court denied permission stating that they could be marked only through the authors of the documents. Thereby the petitioners had filed an Application under Section 243 Cr.P.C. seeking to examine the medical professionals and mark the documents through them, whereas, the Trial Court, by a cryptic order, had dismissed the petition stating that the case has been pending for 14 years.

3. Learned counsel for the petitioners would submit that the petitioners have never been reason for the delay. He would also submit that the petitioners, as accused, have a duty to prove their innocence and the first petitioner examined himself as DW1 and sought permission to mark the documents, viz., the medical records (prescription and notes/records of examination done by the said Doctors) whereas the learned Magistrate denied permission stating that such documents could be marked only through the authors of the documents. In such circumstances, it is very much essential in the interest of justice that the documents should be allowed to be marked through the authors and thereby the petitioners had filed the petition seeking to mark those documents through the Doctors, whereas, the Trial Court had dismissed the same stating that the Case is pending for a long time. He would further submit that as per section 243(2) Cr.P.C., the Magistrate cannot deny issuance of summons unless he considers and comes to a conclusion that the petition with such a plea has been filed for the purpose of vexation or delay or defeating the ends of justice and if so, the said reason should be recorded by him in writing and in this case, without considering the same and without stating any reason, the Magistrate had dismissed the petition. The learned counsel would further submit that fair trial includes fair and proper opportunities allowed by law to prove the innocence of the accused. Adducing evidence in support of the defence is a valuable right. The learned Magistrate, by denying such a



right, had denied fair trial to the petitioners. He would further submit that the petitioner is ready to take steps to bring the Doctors for examination on the next hearing date and the case stands posted to 15.2.2022.

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4. Mr.S.Sugendran, learned Government Advocate (Criminal Side) would submit that the case has been pending for 14 years and this court, in CrI.O.P.No.5932 of 2019 dated 6.3.2019, has directed to decide the case without any delay, however, he is unable to state whether the petitioners are reason for the delay.

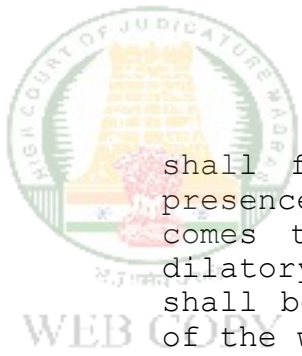
5. Heard the learned counsel appearing for the parties and perused the materials available on record.

6. In this case, the first petitioner had examined himself as DW1. It is the specific case of the petitioners/accused that the de facto complainant was suffering from Cervical Spondylitis for a long time and she has been taking treatment from one Dr.T.K.Muthaian of Villupuram and Dr.B.Ganesh from Sowcarpet, Chennai. The first petitioner had earlier attempted to mark those documents by examining himself as DW1, however, the Trial Court had denied permission stating that they could be marked only through the authors of the documents. When the court had denied such permission, it ought to have given an opportunity to the petitioners to mark the documents through the Doctors, who are the authors of the same.

7. This Court is of the opinion that the petitioners as accused should be given an opportunity to prove their innocence by adducing evidence in support of their defence. Denial of right means denial of fair trial. The Trial Judge cannot avoid the duty of summoning the witnesses unless he is of the view that such an Application should be refused for any of the reasons specified in Sub-section (2) of Section 243 Cr.P.C.

8. In this case, there is no observation by the learned Magistrate that the petition has been filed for the purpose of vexation or delay or for defeating the ends of justice and there is no finding with regard to the same. Further, the prosecution is unable to state whether the accused are responsible for the delay in the trial.

9. In view of the above, the dismissal order passed in CrI.M.P.No.982 of 2021 in C.C.No.02 of 2019 dated 17.12.2021 on the file of the learned Judicial Magistrate Additional Mahila Court, Villupuram is set aside and the said Application is allowed. The trial Court shall issue summons for appearance of the witnesses on the next hearing date viz., on 15.2.2022. If normal functioning of the Courts is not restored, the court



shall fix another date and the petitioners shall ensure the presence of the witnesses on that particular date. If the court comes to a conclusion that the petitioners are indulging in dilatory tactics, the examination of witnesses on the defence shall be closed and they shall lose their chance of examination of the witnesses.

10. With the above observation, this Criminal Revision case is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

shk/gba/ssk

To

1. The Judicial Magistrate,
Additional Mahila Court,
Villupuram.
2. Do-Through,
The Chief Judicial Magistrate,
Villupuram.
3. Station House Officer,
All Women Police Station,
Villupuram.
4. The Public Prosecutor,
High Court, Madras.

Copy to:
The Section Officer,
Criminal Section (Records),
High Court, Madras.

+1cc to Mr.P.Magesh, Advocate, S.R.No.7138

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Crl.M.P.No.597 of 2022

BR(CO)
SU(07/02/2022)