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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.3691 of 2022

&

Crl.M.P.No.1764 of 2022

1.K.Kumaresan

2.K.Ekambaram

...Petitioners

Vs.

The Sub Inspector of Police,
Alangayam Police Station,
Thirupattur District.
(Crime No.67 of 2012)

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to set aside the order passed in C.M.P.No.8842 of 2021 in C.C.No.7/2013 dated:14.12.2021 on the file of learned Judicial Magistrate No.III, Thirupattur, Vellore District.

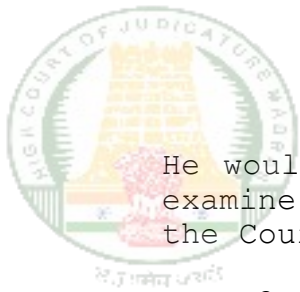
For Petitioners: Mr.V.Krishnamoorthy

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed seeking to set aside the order in C.M.P.No.8842 of 2021, in C.C.No.07/2013, dated 14.12.2021, passed by the learned Judicial Magistrate No.III, Thirupattur, dismissing the petition to recall PW1 to PW7 for cross examination.

2.The learned counsel appearing for the petitioners would submit that the petitioners are facing trial for the offences under Sections 294(b), 324, 325 of IPC. Since the petitioners have not cross examined PW1 to PW7, they have filed an application to recall the witnesses. The trial Court finding that despite an earlier opportunity given to the petitioners to recall the witnesses, the petitioners have not availed the opportunity, had dismissed the application. He would submit that the witnesses have not been cross-examined and it would affect their chance and it would cause grave prejudice to them.



He would further submit that the petitioners are ready to cross examine the witnesses on the same day of their appearance before the Court.

3.The learned Additional Public Prosecutor for the respondent would submit that the case is of the year 2013 and PW1 to PW7 were examined in chief 7 years ago. During the year 2014, petitioners had filed an application for recalling the witnesses in Crl.M.P.No.4363 of 2014 and it was allowed on 19.12.2014. Pursuant to the same, the prosecution produced the witnesses PW1 to PW5 for cross examination on 20.06.2016 before the Court. The petitioners/accused did not chosen to cross examine the witnesses, who appeared before the Court and sought for time. The trial Court took a serious view on the attitude of the accused and imposed a cost of Rs.100/- towards each witnesses and closed the recall application in respect of PW1 to PW5 and ordered fresh summons for PW6 and PW7. However, petitioners/accused without challenging the order of closing the recall application, has filed a similar petition.

4.He further submits that the trial Court, while dismissing the application, has also found that the petitioners had suppressed the earlier order passed by the trial Court and had dismissed the same. The trial Court taking into consideration the mandate of the order passed by the Hon'ble Apex Court in the case of Vinoth Kumar Vs. State of Punjab, dated 23.09.2014, had dismissed the application, holding that it is a case pending for more than 7 years.

5.At this juncture, the learned counsel appearing for the petitioners would submit that the matter arises out of the land dispute between the petitioners and the witnesses who are neighbors in the same village. He would submit that if one chance is given to the petitioners and some cost is imposed, the petitioners are prepared to pay the amount to the witnesses and the petitioners undertake to cross examine the witnesses on the same day of their appearance before the Court. He further submitted that the case stands adjourned to 10.03.2022 for cross examination of PW8 and PW9 before the trial Court.

6.Heard the learned counsel appearing on either side and perused the materials placed on record.

7.The trial Court finding that despite an opportunity given to the petitioners they have not availed the same and failed to cross examine the witnesses on the date of their appearance, had dismissed the application. In such circumstances, I do not find any infirmity in the order passed by the trial Court. However, this Court finds that if the petitioners are not given an opportunity to cross examine the witnesses it will cause



prejudice to the petitioners and this Court is of the opinion that one chance may be given to the petitioners on imposition of cost and condition.

8. In view of the above, the trial Court is directed to recall PW1 to PW7 on condition the petitioners shall pay cost of Rs.14,000/- out of which, an amount of Rs.2,000/- shall be paid to each witness, on the date of their appearance before the Court. The petitioners shall deposit the amount of Rs.14,000/- to the credit of C.C.No.7 of 2013 on or before 10.03.2022. On such deposit being made, the trial Court shall issue summons to PW1 to PW7. It is made clear that the petitioners shall cross examine the witnesses on the same day of their appearance before the Court. In the event, the petitioners failing to cross examine the witnesses on the date of their appearance, the petitioners shall lose the chance for further cross examination of the witnesses. The trial Court shall also take steps to complete the trial, as expeditiously as possible, preferably within a period of four (4) months from the date of receipt of a copy of this order.

9. In view of the above, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Sub Inspector of Police,
Alangayam Police Station,
Thirupattur District.
2. The learned Judicial Magistrate No.III,
Thirupattur, Vellore District.
3. The Public Prosecutor
High Court of Madras

+1cc to Mr.V.Krishnamoorthy, Advocate, S.R.No.12097

Crl.O.P.No.3691 of 2022
& Crl.M.P.No.1764 of 2022

(CO)
RGA(24/02/2022)