



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.4814 of 2022
and
Crl.M.P.No.2646 of 2022

1.Jayaraman
2.Manikandan
3.Chakravarthy
4.Selvakumar
5.Arul
6.Muthurayar
7.Murugan

...Petitioners/Accused

Vs.

The State
by S.H.O. Kammapuram Police Station,
Virudhachalam District
Crime No.78 of 2010

...Respondent

PRAYER: The Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to set aside the order in Crl.M.P.No.374 of 2019 in C.C.No.157/2011 dated 17.06.2020 on the file of Judicial Magistrate - II, Virudhachalam.

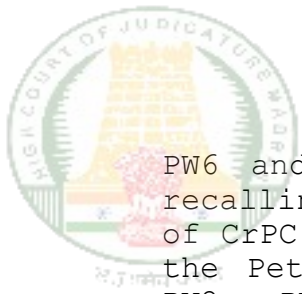
For Petitioner : Mr.M.Selvam

For Respondent : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

O R D E R

The Criminal Original Petition has been filed seeking for a direction to set aside the order passed in Crl.M.P.No.374 of 2019 in C.C.No.157/2011 dated 17.06.2020 on the file of the learned Judicial Magistrate - II, Virudhachalam.

2.Learned counsel for the Petitioner would submit that the Petitioners are accused in C.C.No.157 of 2011 for the offences under Sections 148, 452, 323, 326, 341, 427 & 506 (11) IPC. The Petitioners were unable to cross examine PW2 &



PW6 and thereby the Petitioners were filed a petition for recalling PW2 & PW6 in C.M.P.No.374 of 2019 under Section 311 of CrPC. The learned trial Judge, on 17.06.2020, had dismissed the Petition and the Petitioners were not allowed to recall PW2 & PW6. He would further submit that if one opportunity is not given to the petitioners to recall and cross examine PW2 & PW6, it would amount to the case of no defence, resulting in grave prejudice to the petitioners.

3.Learned Additional Public Prosecutor would submit that it is the case of the year 2011. Witnesses were examined as early as in 2012. The Petitioners have not cross examined the witnesses and only to prolong the proceedings, the recall Petition has been filed during the year 2019, for recalling PW2 & PW6 witnesses in C.M.P.No.374 of 2019 and the learned trial Judge had rightly dismissed the same. He further submits that 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, had dismissed the application, holding that it is a case pending for more than 9 years.

4.Heard the learned counsel appearing for the Petitioners and the learned Additional Public Prosecutor and perused the materials available on record.

5.The trial Court finding that despite opportunity given to the petitioners they have not availed the same and failed to cross examine the witnesses, 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.

6.In view of the above, the order passed in CrI.M.P.No.374 of 2019 in C.C.No.157/2011 dated 17.06.2020 on the file of the learned Judicial Magistrate - II, Virudhachalam, stands set aside and the trial Court is directed to recall PW2 & PW6 on condition that the petitioners shall pay cost of Rs.4,000/- 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.4,000/- to the credit of C.C.No.157 of 2011. On such deposit being made, the trial Court shall issue summons to PW2 to PW6. It is made clear that the petitioners shall cross examine the witnesses on the same day of their appearance before the trial Court. In the event, the petitioners failing to cross examine the witnesses on the date of their appearance, the petitioners shall lose the chance of cross examining the witnesses.



7. With this above observations and directions, this Criminal Original Petition stands disposed of. Consequently, connected Criminal Miscellaneous Petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

shk/sai

To

1. The S.H.O. Kammapuram Police Station,
Virudhachalam District.
Crime No.78 of 2010

2. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.M.Selvam, Advocate SR. No.14431

Cr1.O.P.No.4814 of 2022
and
Cr1.M.P.No.2646 of 2022

NMI (CO)
PR (18/03/2022)