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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2022

CORAM

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

Crl.O.P.No.4446 of 2022

and

Crl.M.P.No.2255 of 2022

1.Mala Agarwal,
W/o.Rajiv Agarwal

2.Suraj Mukhi Rai,
D/o.Late Kundan Rai

... Petitioners

Vs

Rajiv Agarwal,
S/o.Late R.G.Agarwal

... Respondent

PRAYER: This Criminal Original Petition filed under Section 407 Cr.P.C., to transfer C.C.No.558 of 2017 on the file of the learned Judicial Magistrate No.II, Alandur to any other Judicial Magistrate and dispose the same in accordance with law.

For Petitioners : Mr.C.T.Murugappan

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed, to transfer C.C.No.558 of 2017 on the file of the learned Judicial Magistrate No.II, Alandur to any other Judicial Magistrate and dispose the same in accordance with law.

2. Learned counsel for the petitioners would submit that the petitioners are accused facing Trial in C.C.No.558 of 2017, which is a private complaint filed by the respondent for the offence under Section 109,120 A, 199, 415, 420, 494, 495 and Section 496 of IPC. The petitioners are residing at Thane, Maharashtra. The petitioners had filed applications under Section 311 of Cr.P.C to recall the complainant/PW1 and the Trial Court allowed the petitions on 06.12.2021. The case was posted for cross examination of PW1 on 20.12.2021 and specific time was fixed at 3.00 pm. Due to pandemic restrictions, the



petitioners were unable to travel to chennai and due to some miscommunication, the petitioners were unable to contact their counsel. The counsel for the petitioners and the petitioners did not appear before the Court on 20.12.2021 and that the learned Judge irate by the absence of the petitioners and their counsels, had posted the case immediately on the very next day i.e., on 21.12.2021. The petitioners were unable to make travel arrangements within a day and the Trial Court on the very next day, called the petitioners absent and issued Non Bailable Warrant of arrest and posted the case for the purpose of questioning under Section 313 of Cr.P.C on 06.01.2022.

3. Learned counsel for the petitioners would further submit that on 06.01.2022, the petitioners were present before the Trial Court and they were ready to surrender themselves before the said Court and recall the Non Bailable Warrant. The learned Trial Judge posted the case to the very next day on 07.01.2022 and on the very next day, the petitioners surrendered before the Court and filed the applications for recalling the warrant. However, learned Trial Judge had dismissed the petition for recalling the warrant and remanded the petitioners to Judicial Custody till 12.01.2022. The petitioners filed the application for bail and the bail application was taken up for hearing, late in the evening on 12.01.2022 and it was dismissed. Later, they were granted bail by the Sessions Court.

4. Learned counsel for the petitioners would submit that though the petition has been filed seeking for transfer, the petitioners are not insisting for transfer and he would pray that permission may be granted to the petitioners to recall and cross examine PW1. He would further submit that if the petitioners are not allowed to recall and cross examine PW1, it would only amount to a case of no defence. The petitioners should be afforded opportunity of fair trial. The learned counsel would further reiterate that though there had been some lapses on the part of the petitioners, it is on account of the fact that the petitioners are from Maharashtra and they were not properly advised. He would submit that if opportunity is given to the petitioners, they would cross examine PW1 either on the next hearing date or any other date fixed by the Trial Court. Thereby, he would pray for direction to the Trial Judge to recall the complainant/PW1 for cross examination.

5. Heard both sides and perused the materials available on record.

6. The petitioners are accused facing Trial in C.C.No.558 of 2017 on the file learned Judicial Magistrate No.II, Alandur. They are residents of Bombay. They have filed applications under Section 311 of Cr.P.C seeking to recall PW1 and the learned



Trial Judge by order dated 06.12.2021, had allowed the petitions specifically, fixed the date to cross examine PW1 on 20.12.2021 at 3.00p.m. It is submitted that due to pandemic restrictions, the petitioners were unable to travel from Bombay and due to some miscommunication, the were also unable to inform their counsel, who had appeared for them. The learned Trial Judge had posted the matter on the next day and finding that the petitioners were absent, had issued Non Bailable Warrant of arrest, pursuant to which, the petitioners had surrendered and they were remanded to the Judicial custody and later they have been release on bail.

7. Admittedly, in this case, complainant/PW1 has not been cross examined so far. If the petitioners are not permitted to cross examine PW1, it would amount to the case of no defence. Taking into consideration the facts and submissions made by the counsels, this Court of the opinion that opportunity of cross examination may be given to the petitioners.

8. In view of the above, this Criminal Original Petition stands disposed with a direction to the learned Judicial Magistrate No.II, Alandur, to give opportunity of cross-examining the complainant/PW1 either on 09.03.2022 (next hearing date) or any other subsequent date fixed by the learned Trial Judge.

9. It is made clear that if the petitioners do not cross-examine the complainant/PW1 on the date fixed by the learned Trial Judge, they shall lose further chance of cross-examining the witnesses.

10. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

shk/arb

To

1. The Judicial Magistrate No.II,
Alandur.



2. The Public Prosecutor,
High Court of Madras.

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+2cc to Mr.C.T.Murugappan, Advocate, S.R.No.13904

Cr1.O.P.No.4446 of 2022
and
Cr1.M.P.No.2255 of 2022

SV (CO)
CT (02/03/2022)