



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2022

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No.8878 of 2022

1. P.Selvaraj

2. Dinesh

... Petitioners

Vs

The State rep by its Inspector of Police,
Tirupur North Police Station,
Tiruppur.

... Respondent

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order dated 02.02.2021 made in Cr.M.P.No.652 of 2020 in C.C.No.633 of 2019 on the file of the Judicial Magistrate -1, Tiruppur.

For Petitioners: Mr.Balaji Thirumoorthy

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order dated 02.02.2021 made in Cr.M.P.No.652 of 2020 in C.C.No.633 of 2019 on the file of the Judicial Magistrate -1, Tiruppur.

2. The learned Counsel for the petitioners would submit that the petitioners are accused facing trial in C.C.No.633 of 2019 on the file of the Judicial Magistrate -1, Tiruppur for the offence under Section 420 of IPC. The respondent/Police had examined PW1 to PW6 in chief on 21.01.2020. Since the petitioners' counsel was unable to appear before the Court on that day, the petitioners were unable to cross examine the witnesses on 21.01.2020. He would further submit that the petitioners, immediately, on the next hearing on 06.02.2020, filed an application to recall the witnesses, whereas, the trial



Court stating that, the reason "the petitioners' counsel was unable to be present for cross examination", cannot be a ground to recall the witness has dismissed the said application following the guidelines issued by the Hon'ble Apex Court in the case of Vinod Kumar Vs State of Punjab reported in 2015 (3) SCC 220.

3.The learned counsel for the petitioners would further submit that though there had been serious lapses on the part of the petitioners as well as their counsel, if a chance is not given to the petitioners to recall PW1 to PW6 for cross examination, it would amount to a case of no defence resulting in great prejudice to the petitioners. He would further submit that the petitioner undertakes to cross examine the witnesses on the same day of their appearance and the petitioners are also prepared to pay costs for the appearance of petitioner. He would further submit that the case now stands posted today i.e., on 20.04.2022 for examination of the defence witnesses. He would reiterate that if one more chance is not given to the petitioners to cross examine the witnesses it would cause great prejudice.

4.Learned Additional Public Prosecutor appearing for the respondent would submit that the witnesses PW1 to PW6 were examined on 20.01.2020. He would further submit that the application for recall was filed on next hearing date i.e., on 06.02.2020. He would also submit that the case is now posted for examination of the defence witnesses today i.e., on 20.04.2022. He would further submit that the witnesses are local witnesses from Tiruppur and they are also available.

5.Heard the learned counsel for the petitioners and learned Additional Public Prosecutor for the respondent and perused the materials available on record.

6.The Learned Trial Judge, taking into consideration the guidelines issued by the Hon'ble Apex Court in the case of Vinod Kumar Vs State of Punjab reported in 2015 (3) SCC 220, had dismissed the petition. This Court does not find any infirmity in the said order passed by the trial Court. However, in this case PW1 to PW6 have not been cross examined. The Court is of the opinion that the evidence of P.W.1 to P.W.6 is essential to arrive at a just decision in the case. In such circumstances, it would amount to a case of no defence resulting in great prejudice to the petitioners. This Court give one more chance to the petitioners to recall and cross examine the witnesses on imposing of costs and terms in this case.

7.In view of the above, the order of the learned trial Judge in Cr.M.P.No.652 of 2020 in C.C.No.633 of 2019 is set



aside and the learned trial Judge is directed to fix the date for appearance of P.W.1 to P.W.6 and recall them on payment of cost of Rs.12,000/- (Rupees Twelve Thousand only) by the petitioners on the next hearing date and the petitioner shall cross examine the witnesses on the same day fixed by the trial Court, failing which, they lose their chance to recall them again. The trial Court shall disburse Rs.2000/- each to the witnesses on the date of their examination.

8. With the above direction, this Criminal Original Petition stand disposed of.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vkr/nti

To

1. The Judicial Magistrate -1,
Tiruppur.
2. The Inspector of Police,
Tirupur North Police Station,
Tiruppur.
3. The Public Prosecutor,
High Court of Madras.

Cr1.O.P.No.8878 of 2022

SS (CO)
SU (26/04/2022)