



WEB COPY

Crl.O.P.No.26566 of 2022
and Crl.M.P.No.16379 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.26566 of 2022
and Crl.M.P.No.16379 of 2022

1.Vijayarani

2.Naveen

...

Petitioners

versus

The State rep. by
The Inspector of Police,
Ramanatham Police Station,
Tittakudi Taluk,
Cuddalore District.
(Crime No.157/2014)

...

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in C.M.P.No.2684 of 2022 in C.C.No.27 of 2022 on the file of the learned Judicial Magistrate, Tittakudi dated 18.10.2022 and set aside the same and consequently permit the petitioners to recall P.W.1 to P.W.7 for the cross examination.

For Petitioners : Mr.S.Kamadevan

For Respondent : Mr.S.Santhosh
Government Advocate (Crl. Side)



ORDER

This Criminal Original Petition has been filed to set aside the order of the learned Judicial Magistrate, Tittakudi dated 18.10.2022 made in C.M.P.No.2684 of 2022 in C.C.No.27 of 2022.

2. The petitioners are A-1 and A-2 in a case in C.C.No.27 of 2022. During the course of trial, the petitioners have filed a petition to recall P.W.1 to P.W.7 for cross examination and the said petition was dismissed on 18.10.2022. Aggrieved over that, this Criminal Original Petition has been preferred.

3. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl. Side) appearing for the respondent.

4. The learned counsel for the petitioners submitted that due to change of counsel, the petitioners could not cross examine P.W.1 and P.W.2 since they were advised that the rest of the witnesses should be cross examined after the completion of cross examination of P.W.1 and P.W.2, they could not cross examine P.W.3 to P.W.7 when they were present for chief



examination; unless the petitioners are allowed to cross examine P.W.1 to P.W.7 their valuable right of defence will be lost and hence, the order of the learned Judicial Magistrate should be set aside.

5. The learned Judicial Magistrate had observed in his order that no satisfactory reason has been stated in the petition filed by the petitioners to recall the witnesses. On perusal of the petition filed by the petitioners, it is seen that the petition is bereft of any reasons, though the learned counsel for the petitioners now submitted elaborate reasons as to why P.W.1 and P.W.2 were not cross examined on the day when they were present.

6. If the petitioners had chosen to cross examine rest of the witnesses only after completion of cross examination of P.W.1 and P.W.2, the rightful course open to them is to file a petition to defer cross examination of rest of the witnesses and get appropriate orders from the trial Court. Even on the day when P.W.1 and P.W.2 were present the petitioners did not cross examine them because they changed their counsel. If proper representation



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was made to the Court on the day when P.W.1 and P.W.2 were present, the cross examination of P.W.1 and P.W.2 could have been deferred. Due to the inaction on the part of the petitioners, P.W.1 and P.W.2 had to be present before the Court once again. The inconvenience caused to P.W.1 to P.W.7 was due to the lethargic action and delay caused on the part of the petitioners.

7. The records would show that P.W.3, P.W.5 and P.W.7 were treated as hostile witnesses. Only P.W.1, P.W.2, P.W.4 and P.W.6 had supported the case of the prosecution. Hence, the ends of justice will be served if the petitioners are permitted to recall P.W.1, P.W.2, P.W.4 and P.W.6 alone on payment of costs.

8. In view of the above stated reasons, this Criminal Original Petition is partly allowed and the order of the learned Judicial Magistrate, Tittakudi dated 18.10.2022 made in C.M.P.No.2684 of 2022 in C.C.No.27 of 2022 is hereby set aside and the petitioners are permitted to recall P.W.1, P.W.2, P.W.4 and P.W.6 alone on payment of costs of Rs.1,000/- [Rupees One Thousand only] to each of the witnesses on the day when they were



present for cross examination. The petitioners shall cross examine the witnesses as and when they were present before the Court without seeking for any further adjournment. Failure of any of the above conditions will deprive them the benefit of this order. Consequently, connected Miscellaneous Petition is closed.

03.11.2022

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

sri

To

- 1.The Judicial Magistrate,
Tittakudi.
- 2.The State rep. by
The Inspector of Police,
Ramanatham Police Station,
Tittakudi Taluk,
Cuddalore District.
- 3.The Public Prosecutor,
Madras High Court,
Chennai.



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R.N.MANJULA, J.

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