



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.O.P (MD) No.177 of 2022

and

CrI.M.P. (MD) No.119 of 2022

1.Subbaiah

2.Kalyani

... Petitioners/Accused Nos.1&2

Vs

The State rep. by
The Inspector of Police,
Madhagupatti Police Station,
Sivagangai District.

... Respondent/Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records relating in Cr.M.P.No.4255 of 2021 in C.C.No.29 of 2020 on the file of the learned Chief Judicial Magistrate, Sivagangai, dated 30.11.2021 and to set aside the same.

For Petitioners : Mr.G.Karuppasamy Pandiyan

For Respondent : Mr.M.Sakthi Kumar

Government Advocate (crl.)

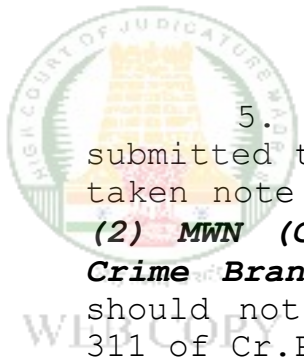
ORDER

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

2. The petitioners are facing trial in C.C.No.29 of 2020 on the file of the Chief Judicial Magistrate, Sivagangai for the offences under Sections 447, 294(b) and 506(ii) of IPC.

3. On 19.03.2020, P.W.1 to P.W.3 were cross examined in chief. For reasons not quite clear, the petitioners failed to cross examine the said witnesses. They filed a petition for recall under Section 311 of Cr.P.C several months later. The court below vide order dated 30.11.2021 dismissed the said petition. Challenging the same, this Criminal Original Petition came to be filed.

4. The learned counsel appearing for the petitioners reiterated all the contentions set out in the memorandum of grounds and called upon this Court to set aside the impugned order and grant one more opportunity to the petitioners herein.



5. Per contra, the learned Government Advocate (crl.side) submitted that the conduct of the petitioners herein will have to be taken note of. He placed reliance on the decision reported in **2019 (2) MWN (Cr.) 171 (M.Vellaisamy Vs. Inspector of Police, Central Crime Branch, Chennai)**, in which, it was held that the courts should not casually allow the recall petition filed under Section 311 of Cr.P.C.

6. The proposition canvassed by the learned Government Advocate is unexceptionable. However, taking note of the special facts and circumstances obtaining in this case, I am of the view that one more opportunity deserves to be given to the petitioner herein.

7. The learned counsel for the petitioners states that all the three witnesses are very much alive. The case on hand is a criminal case and if the trial is permitted to proceed without their testimony being tested in cross examination, then, the petitioner's defence will be irreparably damaged. Even though the petitioners' conduct cannot be condoned, in the interest of justice and for ensuring fair trial, the order impugned in this petition is set aside. The petitioner's counsel gives an undertaking that without any further delay, they will remit process fee and batta charges. They will also pay a sum of Rs.1,000/- to be paid to each witnesses (Rs.3,000/- in all). They also give a further undertaking that on the same day when they are produced, they would be cross examined.

8.This Criminal Original Petition is accordingly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Chief Judicial Magistrate, Sivagangai.



2.The Inspector of Police,
Madhagupatti Police Station,
Sivagangai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.KARUPPASAMY PANDIYAN, Advocate (SR-812[F] dated
07/01/2022)

CrI.O.P (MD) No.177 of 2022
06.01.2022

RK(10/01/2021) 3P 5C