



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.5780 of 2022

1.Ananthan
2.Subramani
3.Banumathi
4.Kasinathan
5.Nepolien
6.Kalaiselvam
7.Satheesh
8.Muthuramalingam

...Petitioners/Accused Nos.1 to 8

Vs.

The Inspector of Police,
Thiruvegambathu Police Station,
Sivagangai District.

...Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order in Cr.M.P.No.5339 of 2021 dated 09.12.2021 in S.C.No.51 of 2019 on the file of the Chief Judicial Magistrate Court, Sivagangai.

For Petitioners : Mr.S.Pugalendhi

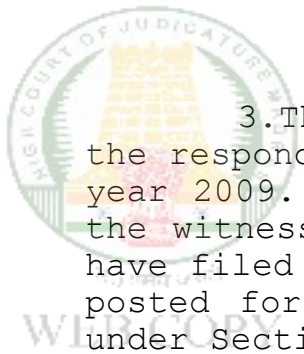
For Respondent : Mr.R.Sureshkumar

Government Advocate (Crl.side)

ORDER

This petition has been filed to set aside order passed in Cr.M.P.No.5339 of 2021 dated 09.12.2021 in S.C.No.51 of 2019 by the learned Chief Judicial Magistrate, Sivagangai.

2.The learned counsel appearing for the petitioners submitted that the petitioners are the accused in S.C.No.51 of 2019 on the file of the learned Chief Judicial Magistrate, Sivagangai. Against these petitioners, charge sheet has been filed for the offences under Sections 147, 148, 294(b), 323, 324, 506(ii) and 307 of IPC. In this case, after framing of charges, prosecution witnesses namely, PW1 to PW5 were examined. But they were not cross examined by the accused, since the advocate was not available at the time. Subsequently, he suffered from Covid-19, so he was not able to cross examine the witnessess. Now the petitioners have filed a petition in Crl.M.P.No.5339 of 2021 to re-call PW1 to PW5 for the purpose of cross examination and to substantiate their case by placing their defence. Without considering their contentions, the learned Chief Judicial Magistrate, Sivagangai has dismissed the same. Challenging the same, the petitioners have filed this Criminal Original Petition.



3.The learned Government Advocate (Crl.side) appearing for the respondent police submitted that PW1 to PW5 were examined in the year 2009. So far the accused have not taken any steps to re-call the witnessess at the time of trial. At the end of the trial, they have filed a petition to re-call the witnesses. Further the case was posted for argument on 20.06.2022 after completion of questioning under Section 313 of Cr.P.C.

4. I have considered the matter in the light of the submissions made by the parties.

5.On perusal of records, it is seen that the petitioners are accused in S.C.No.51 of 2019 on the file of the learned Chief Judicial Magistrate, Sivagangai and they are prosecuted for the offences punishable under Sections 147, 148, 294(b), 323, 324, 506) ii) and 307 of IPC. After framing of charge, PW1 was examined on 03.10.2019 and the case was adjourned to 31.10.2019. On that day, chief examination of PW2 was completed. Since the accused persons sought time, the case was adjourned to 19.11.2019. On that day, PW3 - Kathiresan, PW4 - Rajendran and PW5 - Thennavan were examined. All these dates, cross examination was not conducted for want of accused advocate. This fact is revealed from the copy of the deposition filed by the learned counsel. These five witnesses deposed against the petitioners/accused. To defence their case, the witnessess have to be cross examined and the chance has to be given. So, the interest of justice and also to give a chance to the petitioners/accused to place their defence to meet prosecution case, this Court is inclined to allow the petition.

6.In view of the above, the impugned order dated 09.12.2021 made in Cr.M.P.No.5339 of 2021 in S.C.No.51 of 2019 on the file of the learned Chief Judicial Magistrate, Sivagangai is hereby set aside and re-call petition is allowed on condition that the petitioners have to be examined all the witnesses PW1 to PW5 on the same day itself and further the petitioners have to pay the day costs for all the witnesses PW1 to PW5. The learned Chief Judicial Magistrate, Sivagangai is hereby directed to re-call PW1 to PW5 and fix a date for cross examination of the said witnesses. If the petitioners fail to cross examine the said witness on the particular date, no further chance will be given to them.

7.With the above direction, this Criminal Original Petition stands allowed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

vsd



To

- 1.The Chief Judicial Magistrate,
Sivagangai.
- 2.The Inspector of Police,
Thiruvegambathu Police Station,
Sivagangai District.
- 3.Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S. PUGALENDHI, Advocate (SR-26321[F] dated
17/06/2022)

CRL.O.P (MD) No.5780 of 2022
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MGJ(22.06.2022) 3P 5C