



Crl.O.P.(MD)No.22148 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.O.P.(MD) No.22148 of 2022
and Crl.M.P.(MD).No.15630 of 2022

1.Panneerselvam

2.Vijaya

... Petitioners

Vs.

State rep. by it's through:
The Sub Inspector of Police,
Thogur Police Station,
Thanjavur District.
Crime No.37 of 2016.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the order dated 28.03.2022 made in C.M.P.No.710/2022 in C.C.No.69/2016 Thiruvaiyaru and set aside the same .

For Petitioner : Mr.T.Vadivelan

For Respondent : Mr.E.Antony Sahaya Prabakar
Additional Public Prosecutor

ORDER

This petition is filed to set aside the order, dated 28.03.2022, made in C.M.P.No.710/2022 in C.C.No.69/2016 on the file of the learned



Judicial Magistrate, Thiruvaiyaru.

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2.Challenging the order of dismissal that was passed by the trial Court, this petition has been preferred. The petitioners have filed a petition under Section 311 Cr.P.C. to recall the witnesses P.W.1 to P.W.3 and P.W.5. The counsel for the petitioners submitted that the petitioners are facing charges under Sections 294(b), and 324 IPC @ 294(b) and 326 of IPC before the trial Court. PW1 to PW5 were examined in chief. At that time, the learned counsel, who appeared for the accused before the trial Court was affected by Covid – 19 virus. Thereafter, he did not appear before the trial Court. Therefore, new counsel was engaged by the petitioners and he appeared before the concerned Court and cross examined PW6. Thereafter, he filed the above said petition to recall the witnesses PW1 to PW3 and PW5 for cross examination. But the same was dismissed.

3.The learned Additional Public Prosecutor submitted that after a lapse of four years, in spite of granting adjournments for 56 hearings, the petitioners did not taken any steps to recall the above said witnesses. On that ground the order has been passed by the trial Court need not be interfered.



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4.PW1 stated to be injured and without cross examining the injured witness, it may not be proper for the trial Court to decide the matter on merits, since serious charges are framed. However, since there is a delay on the part of the petitioners for four years, the delay must be compensated. Therefore, I am of the considered view that the petition is liable to be allowed with the following stringent conditions.

1) The petitioners must deposit a sum of Rs.2,000/- (Rupees Two Thousand only) as cost to each of the witnesses to the credit of C.C.No.69 of 2016 before the trial Court, within a period of 15 days from the date of receipt of a copy of this order.

2) On such deposit, the trial Court is directed to recall the witnesses P.W.1 to P.W.3 and P.W.5 for cross examination by fixing a particular date. On that date, the petitioners must cross examine the witnesses without fail. If any failure is noticed, then the further right to cross examine the witnesses will be forfeited.



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4. With the above directions this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
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15.12.2022

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 Sub Inspector of Police,
Thogur Police Station,
Thanjavur District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVA. J.

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