



Crl.O.P.No.1711 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

CORAM :

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

**Crl.O.P.No.1711 of 2023
and Crl.M.P.No.980 of 2023**

1. L.Samuvel
2. Chakravarthy .. Petitioners

Versus

The State
Represented by Inspector of Police,
B-1 North Beach Police Station,
Chennai. .. Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.25789 of 2022 in S.C.No.90 of 2018, dated 22.12.2022 on the file of the learned XV Additional Sessions Court, Chennai.

*Amended as per orders, dated 06.02.2023 in Crl.M.P.No.1726 of 2023 in Crl.O.P.No.1711 of 2023.

For Petitioners : Mr.N.Umapathi

For Respondent : Mr.A.Gopinath,
Government Advocate (Crl. Side)

ORDER

This petition has been filed challenging the order passed by the Court below in C.M.P.No.25789 of 2022, dated 22.12.2022, dismissing the



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application filed under Section 309 of Cr.P.C., to adjourn the case to enable the petitioners to cross-examine P.W.1 and P.W.2.

2. Heard Mr.N.Umapathi, learned Counsel for the petitioners and Mr.A.Gopinath, learned Government Advocate (Crl. Side) for the respondent.

3. The petitioners are facing trial for offences under Sections 489B and 489C of I.P.C. The petitioners filed C.M.P.No.15462 of 2022 to recall P.W.1 to P.W.3 to enable the petitioners to cross-examine them. This application was allowed by the Court below by order, dated 09.12.2022 and the petitioners were directed to pay cost of Rs.2,000/- to each of the witness on the date of their appearance and the Court also made it clear that those witnesses will be cross-examined on the same day without fail.

4. The matter was posted for the cross-examination of P.W.1 to P.W.3 on 04.11.2019. On that day, P.W.1 and P.W.3 were present in the Court, but, the petitioners did not cross-examine those witnesses. Since P.W.2 was not present on that day, the matter was adjourned to the next hearing date on



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05.01.2022 and on that day, P.W.2 was cross-examined. Since P.W.1 and P.W.3 were not able to be cross-examined on the date of their appearance, an application under Section 309 of Cr.P.C., was filed seeking for adjournment on the ground that the Advocate who was conducting the case had to go to his native place since his mother passed away. This application came to be dismissed by the Court below by order, dated 22.12.2022 and aggrieved by the same, the present petition has been filed before this Court.

5. The learned Government Advocate (Crl. Side) appearing on behalf of the respondent submitted that the case is now at the stage of examination of the Investigation Officer and it is posted on 31.08.2023.

6. Taking into consideration the facts and circumstances of the case and the reason assigned by the petitioners for not being able to cross-examine P.W.1 and P.W.3 on the date of their appearance, this Court is inclined to give one last chance to the petitioners to cross-examine P.W.1 and P.W.3. Accordingly, the order passed by the Court below in C.M.P.No.25789 of 2022, dated 22.12.2022 is hereby set aside.



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7. This Criminal Original Petition is disposed off as follows:-

(a) The petitioners shall deposit a sum of Rs.3,000/- for each witness, namely P.W.1 and P.W.3 on or before 30.08.2023;

(b) The Court below shall fix a date for recalling P.W.1 and P.W.3 and on the date of their appearance, the costs shall be paid to them. On the very same day, both these witnesses shall also be cross-examined on the side of the petitioners;

(c) If the petitioners fails to cross-examine P.W.1 and P.W.3 on the date of their appearance, the petitioners will lose their right to recall those witnesses in future and the Court below is directed to complete the proceedings in S.C.No.90 of 2018 within a period of three months from the date of receipt of a copy of this order;

(d) When the Investigation Officer is examined on 31.08.2023, the petitioner shall cross-examine the Investigation Officer on the same day and recalling P.W.1 and P.W.3 shall not be taken advantage of to postpone the cross-examination of the Investigation Officer.

22.08.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no



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To

1. The XV Additional Sessions Court,
Chennai.
2. The Inspector of Police,
B-1 North Beach Police Station,
Chennai.
3. The Public Prosecutor,
High Court of Madras.



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N.ANAND VENKATESH, J.

grs

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