



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.20559 of 2023

1.Vanathaiyan

2.Gilaramary

... Petitioners

Vs.

The Sub Inspector of Police,
Thachampet Police Station,
Thiruvannamalai.
(Crime No.149/2012)

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order in Crl.M.P.No.1169 of 2023 in CC.No.261 of 2020 dated 02.03.2023 passed by learned Judicial Magistrate-I, Thiruvannamalai and pass such further or other orders

For Petitioners : Mr.P.Jayachandran

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor

ORDER



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This petition has been filed challenging the order passed by the court below in CrI.M.P.No.1169 of 2023, dated 02.03.2023, dismissing the application filed by the petitioners under Section 311 of Cr.P.C., to recall PW1 to PW5 and PW7 for cross-examination.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor.

3.The petitioners are facing trial before the court below for offence under Sections 294(b), 324 and 506(ii) of IPC. The prosecution had examined PW1 to PW5 and PW7 and none of the witnesses were cross-examined. The petitioners filed an application to recall these witness for cross-examination. The reasons assigned by the petitioners is that the counsel representing the petitioners was indisposed and hence, those witnesses were not cross-examined on the day when they were examined in chief. The Court below did not accept the reason assigned by the petitioners and hence, dismissed the application. Aggrieved by the same, this criminal original petition has been filed before this court.



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4.The learned Additional Public Prosecutor on instructions submitted that there is a case and counter and both the cases are tried by the learned Judicial Magistrate-I, Tiruvannamalai in C.C.Nos.261 and 262 of 2020. The learned Additional Public Prosecutor submitted that a similar application was filed by the accused persons in C.C.No.262 of 2020 to recall PW1 to PW4 for cross-examination and the same was also dismissed by the court below by an order dated 02.03.2023. The learned Additional Public Prosecutor further submitted that both the cases are posted for examination of the other prosecution witnesses on 26.09.2023.

5.In the considered view of this court, since case and counter is tried by the same Court in C.C. os.261 and 262 of 2020, it has to be tried in line with the judgment of the Apex Court in ***Nathi Lal and others vs. State of Uttarpradesh and another*** reported in ***1990 (Supp) SCC 145***. If the petitioners are permitted to recall the witnesses, similar liberty must be given to the accused persons who are facing trial in the counter case in C.C.No.262 of 2020.

6.Taking into consideration the facts and circumstances of the case and in



order to afford a final opportunity to the petitioners to recall and cross-examine the witnesses, this court is inclined to interfere with the order passed by the court below in Crl.M.P.No.1169 of 2023, dated 02.03.2023 and accordingly, the same is set aside. Even though, the order passed in Crl.M.P.No.1171 of 2023 in C.C.No.262 of 2020, dated 02.03.2023, has not been put to challenge before this court. This Court is inclined to interfere with that order also, since there is a case and counter and both sides must be given an opportunity. Accordingly the said order passed in Crl.M.P.No.1171 of 2023 is also set aside by this Court.

7.The Court below is directed to issue summons to the witnesses viz., PW1 to PW5 and PW7 in C.C No.261 of 2020 for their appearance and these witnesses shall be cross-examined on the side of the petitioners on the same day. The petitioners shall pay a cost of Rs.500/- to each of the witnesses on the day of their appearance. If for any reason, the petitioners do not cross-examine the witnesses on the date of their appearance, the petitioner will lose their right to recall those witnesses in future. Similarly, the Court below shall also fix a date for the appearance of PW1 to PW4 in C.C.No.262 of 2020. Those witnesses shall also be cross-examined on the date of their appearance and each of those witnesses shall



be paid cost of Rs.500/- by the accused persons therein. If for any reason, those witnesses are not cross-examined on the date of their appearance, the accused persons therein will lose their right to recall those witnesses in future.

8.This criminal original petition is accordingly allowed with the above directions and the Court below is directed to dispose of C.C.Nos.261 and 262 of 2020, within a period of four months from the date of receipt of copy of this order.

08.09.2023
(3/3)

Index : Yes/No
Internet : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No
ssr

To

- 1.The Judicial Magistrate-I,
Thiruvannamalai.
- 2.The Sub Inspector of Police,
Thachampet Police Station,
Thiruvannamalai.



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N.ANAND VENKATESH, J

SSI

3.The Public Prosecutor,
High Court, Madras.

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