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Crl.O.P.No.20168 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM :

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.20168 of 2023

1. Sathyaraj
 2. Chinnasamy
 3. Pushparaj
 4. Govindaraj
- .. Petitioners

Versus

State by
The Inspector of Police,
Kadampuliyur Police Station,
(Cr.No.133 of 2014).

.. Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order, dated 27.07.2023 made in Crl.M.P.No.1123 of 2023 in C.C.No.105 of 2015 (on the file of the learned Judicial Magistrate No.II, Panruti).

For Petitioners : Mr.D.Ashok Kumar

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER



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This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 of Cr.P.C., to recall P.W.8 and P.W.9 for further cross-examination.

2. The petitioners are facing trial before the Court below for offences under Sections 294(b), 324 and 326 of I.P.C. The petitioners filed an application in Crl.M.P.No.1123 of 2023 to recall P.W.8 and P.W.9 for further cross-examination. The Court below dismissed the application by order, dated 27.07.2023. Aggrieved by the same, the present petition has been filed before this Court.

3. Heard Mr.D.Ashok Kumar, learned Counsel for the petitioners and Mr.A.Damodaran, learned Additional Public Prosecutor for the respondent.

4. On carefully going through the order, it is seen that P.W.8 and P.W.9 were examined in chief and also cross-examined in the year 2018 itself. However, the petitioners did not cross-examine P.W.1 to P.W.4 and hence, filed an application to recall P.W.1 to P.W.4 and the said application was allowed and these witnesses were cross-examined on 02.03.2023 and



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09.03.2023. According to the petitioners, some answers have been elicited from P.W.1 to P.W.4 and therefore, it became imperative for the petitioners to recall P.W.8 and P.W.9, who are the Investigation Officers for further cross-examination.

5. The Court below has dismissed the application mainly on the ground that P.W.8 and P.W.9 have already been cross-examined extensively and there is no reason to once again recall them.

6. In the instant case, the petitioners had filed an application for recalling P.W.1 to 4 and these witnesses appeared before the Court below only at a later point of time and in the meantime, the petitioners had cross-examined P.W.8 and P.W.9. Therefore, the reason assigned by the petitioners to recall P.W.8 and P.W.9 for further cross-examination has some justification. In view of the same, this Court is inclined to give one last opportunity to the petitioners to recall P.W.8 and P.W.9 for further cross-examination. The learned Additional Public Prosecutor, on instructions, submitted that the case is now at the stage of questioning under Section 313 of Cr.P.C.



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7. In the light of the above discussion, the order passed by the Court below in Crl.M.P.No.1123 of 2023, dated 27.07.2023 is hereby set aside and this Criminal Original Petition is allowed in the following terms:-

(a) The petitioners are directed to deposit cost of Rs.5,000/- for each of the witness i.e., P.W.8 and P.W.9 to the account of C.C.No.105 of 2015 on the file of the learned Judicial Magistrate No.II, Panruti on or before 07.09.2023;

(b) The Court below shall fix a date for the appearance of P.W.8 and P.W.9 and they shall be cross-examined on the same day of their appearance and the further cross-examination shall also be completed on the same day. On the date of appearance, the cost of Rs.5,000/- each shall be paid to P.W.8 and P.W.9;

(c) If, for any reasons, the petitioners fails to further cross-examine P.W.8 and P.W.9 on the date of their appearance, the petitioners will lose their right to recall P.W.8 and P.W.9 in future and the Court below is directed to complete the proceedings in C.C.No.105 of 2015 within a period of three months from the date of receipt of a copy of this order.



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Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no

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Note : Issue order copy on 05.09.2023.

To

1. The Judicial Magistrate No.II,
Panruti.
2. The Inspector of Police,
Kadampuliyur Police Station.
3. The Public Prosecutor,
High Court of Madras.



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N.ANAND VENKATESH, J.

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