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Crl.O.P.No.20530 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.20530 of 2023

1.Kumar

S/o.Manickam

2.K.Indirani

W/o.Kumar

...Petitioners

VS.

The State represented by
Inspector of Police,
Veraiyur police station,
Thiruvannamalai.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside the order in Crl.M.P.No.491 of 2023 in C.C.No.28 of 2022 dated 13.03.2023 passed by learned Judicial Magistrate-I, Thiruvannamalai.

For Petitioners : Mr.M.Sankar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the petition filed in Crl.M.P.No 491 of 2023 in C.C.No.28 of 2022 under Section 311 Cr.P.C., to recall PW-1 and PW-2 for cross-examination.

2. Heard Mr.M.Sankar, learned counsel for petitioners and Mr.A.Damodaran, learned Additional Public Prosecutor for respondent.

3. The petitioners are facing trial before the Court below for offences under Sections 294(b), 323, 324 and 506(ii) of I.P.C and under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. The prosecution examined PW-1 and PW-2 in chief on 06.02.2023. However, these witnesses were not cross-examined since the petitioners were not present before the Court on that date. Hence, a petition has been filed by the petitioners to recall PW-1 and PW-2 and the same was dismissed. Aggrieved by the same, the present petition has been filed.

4. Learned Additional Public Prosecutor, on instructions, submitted



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that the case is now at the stage of examination of LW-3 to LW-5 and the case is posted on 11.09.2023.

5. Taking into consideration the facts and circumstances of the case and the reasons assigned by the petitioners, this Court is inclined to afford one opportunity to the petitioners to recall PW-1 and PW-2 for cross-examination. The petitioners filed the petition within a reasonable time and therefore, the petitioners should not be denied the opportunity of cross-examining these witnesses.

6. In the light of the above discussion, the order passed by learned Judicial Magistrate-I, Thiruvannamalai, in Crl.M.P.No.491 of 2023 in C.C.No.28 of 2022 dated 13.03.2023 is set aside. The Court below is directed to fix a date for the appearance of PW-1 and PW-2. The petitioners are directed to pay cost of Rs.750/- (Rupees Seven Hundred and Fifty only) for each witness. On the date of appearance of these witnesses, the cost

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shall be paid to them and the cross-examination on the side of petitioners shall be completed on the same day. If, for any reason, the petitioners fail to cross-examine PW-1 and PW-2 on the date of their appearance, the petitioners will loose their right to recall the witnesses in future.

This Criminal Original Petition is allowed in the above terms.

07.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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To

1.The Judicial Magistrate I, Thiruvannamalai.

2.The Inspector of Police,
Veraiyur police station,
Thiruvannamalai.

3.The Public Prosecutor,
Madras High Court,
Chennai 600 104.

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