



Crl.O.P.No.26223 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.26223 of 2023

1. P.Jayanthi,
2. Pawn Kumar,

... Petitioners No.1 & 2

/versus/

State Rep by,
The Inspector of Police,
District Crime Branch,
Thiruvannamalai.
(Crime No.2 of 2020)

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., pleaded to set aside the order in Crl.M.P.No.7108 of 2023 in C.C.No.167 of 2022, dated 20.10.2023 passed by learned Judicial Magistrate-I, Thiruvannamalai.

For Petitioners : Mr.P.Jayachandran

For Respondent : Mr.Leonard Arul Joseph Selvam.
Government Advocate (Crl.Side).



CrI.O.P.No.26223 of 2023

ORDER

WEB COPY

The petitioner herein is one of the accused in C.C.No.167/2022 on the file of Learned Judicial Magistrate, Tindivanam.

2. The charges are for the alleged offences under Section 406 & 420 of I.P.C. After examining 14 prosecution witnesses, the petitioners have filed application before the trial Court to recall P.W.1, P.W.9, P.W.10, P.W.11 and P.W.13 stating that, on the date (14.08.2023) examining on of P.W.1, P.W.9, P.W.10, P.W.11 and P.W.13, there was boycott that Court and therefore, his Counsel was not present to cross examine those witnesses.

3. As far as P.W.1 the defacto complainant and P.W.13 the Investigating Officer, it is stated that, some questions to be put to them, which was omitted to be asked earlier.

4. The trial Court, after considering the reasons stated and the dictum laid down by the Hon'ble Supreme Court in *Vinodh Kumar -vs- State of Punjab* reported in *CDJ 2015 SC 115, Chandran @ Ramachandran & two others -vs-*



CrI.O.P.No.26223 of 2023

State and Vellaisamy & another -vs- Inspector of Police reported in ***CDJ 2019***

MHC 2546, dismissed the application stating that, the prosecution witnesses must be cross examined by the accused on the date of chief examination itself. The witnesses cannot be compelled to appear before the Court again and again at the whims and fancies of the accused, in view of the Witness Protection Scheme. Hence, the Judicial Magistrate has dismissed that application filed by the petitioners on 20.10.2023.

5. The Learned Counsel appearing for the petitioners submitted that the application is filed under Section 311 of Cr.P.C to recall the witnesses, showing reasonable cause and if this application is not allowed, prejudice will be caused to the accused. Contrarily, if these witnesses were recalled, facts are elucidated through cross examine, which will help for the Court to arrive at just decision.

6. On perusing the records, this Court finds that, there is no sufficient reason is stated for re-calling these witnesses, except boycott of the Advocate on 14.08.2023. On that day, P.W.1, P.W.9, P.W.10, P.W.11 and P.W.13 were cross examined in chief. They all appears to be official witnesses. Hence, in the interest



CrI.O.P.No.26223 of 2023

of justice, the order of the trial Court is set aside in respect of P.W.9, P.W.10, P.W.11, who were examined in chief on 14.08.2023, when the Advocate abstained from appearing the Court. Summons to theses witnesses shall be issued for appearance and on their appearance, the petitioners and other accused should cross examine the witnesses, failing which, no further adjournment will be given for cross examination of these witnesses.

7. With the above observation, this ***Criminal Original Petition is partly allowed.***

15.12.2023

Index :Yes/No.
Internet :Yes/No.
Speaking Order/Non-Speaking Order
bsm

Copy to:-

1. The Learned Judicial Magistrate-I, Thiruvannamalai.
2. The Inspector of Police, District Crime Branch, Thiruvannamalai.

DR.G.JAYACHANDRAN, J.

Page No.4/5



WEB COPY



CrI.O.P.No.26223 of 2023

bsm

CrI.O.P.No.26223 of 2023

15.12.2023

Page No.5/5