



Crl.O.P(MD)No.3530 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **27.03.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE G.ILANGO VAN**

Crl.O.P(MD)No.3530 of 2023
and
Crl.M.P(MD).No.3194 of 2023

1.Durai @ Chinnadurai

2.Akilesh

: Petitioners/Accused Nos.1 & 2

Vs.

State through by
The Inspector of Police,
Palani Town Police Station,
Dindigul District.
(Crime NO.162 of 2019)

: Respondent/Complainant

PRAYER : Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order made in Crl.M.P.No.5 of 2022 in S.C.No.160 of 2019 on the file of the Additional Assistant Sessions Judge (Additional Sub-Judge), Palani dated 06.02.2023.

For Petitioner

: Mr.D.Venkatesh

For Respondents

: Mr.B.Nambiselvan

Additional Public Prosecutor



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ORDER

This Criminal Original Petition has been filed to set aside the order made in Crl.M.P.No.5 of 2022 in S.C.No.160 of 2019 on the file of the Court of Additional Assistant Sessions Judge(Additional Subordinate Judge), Palani, dated 06.02.2023.

2.The facts in brief:

The petitioners are facing charges under Sections 341, 307 and 506(ii) of IPC, on the file of the Court of Additional Assistant Sessions Judge (Additional Subordinate Judge), Palani. During the trial, on the side of the prosecution, 5 witnesses have been examined in chief. But, the petitioners failed to cross-examine them. Belatedly, they have filed a petition under Section 311 Cr.P.C., seeking permission of the Court to recall the above said witnesses for the purpose of cross examination. The said recall petition was dismissed by the trial Court. Hence, this petition has been filed.

3. On the side of the petitioners, it is submitted that their counsel was appointed as Additional Public Prosecutor, ADJ Court, Palani.



Therefore, they could not cross-examine the witnesses on the day when chief examination was conducted. There was no wilful negligence or laches on their part. For the purpose of defending their case effectively, the cross examination is required.

4. The learned Additional Public Prosecutor resisted the contention of the petitioners stating that the reason assigned by the petitioners is not valid and satisfactory.

5. Considering the serious offence, this Court is inclined to allow the petitioners to cross-examination. Accordingly, this criminal original petition is allowed on the following conditions.

(i)The petitioners must deposit Rs.2,000/- as cost to each of the witnesses namely PW1 to PW5 to the credit of S.C.No.160 of 2019, before the trial Court, within a week from the date of receipt of the copy of this order.

(ii) On such deposit being made, the trial Court shall recall the witnesses namely PW1 to PW5 in scheduled manner. On the date fixed as per the schedule, the petitioners must cross examine the witnesses without fail and if any failure is noticed, then the right of the petitioners



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to cross examine the witnesses will stand forfeited. Let the trial process be completed within 5 months.

Consequently, connected Miscellaneous Petition is closed.

27.03.2023

Index : Yes/No

Internet : Yes/No

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To

1.The Inspector of Police,
Palani Town Police Station,
Dindigul District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGO VAN,J.,

Rmk



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