



Crl.O.P.(MD).No.14232 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2023

CORAM

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

Crl.O.P.(MD).No.14232 of 2020

and

Crl.M.P(MD)No.6597 of 2020

1.Dhanapal

2.Kalvi

... Petitioners

Vs.

State represented by
The Inspector of Police,
Sellur Police Station,
Madurai District.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the impugned order passed in Cr.M.P.No.2343 of 2020 in S.T.C.No.73 of 2016 on the file of the learned Judicial Magistrate Court No.II, Madurai and set aside the same and allow the direction petition.

For Petitioner : M/s.R.Karunanidhi

For Respondent : Mr.R.Meenakshi Sundaram
Addl.Public Prosecutor



Crl.O.P.(MD).No.14232 of 2020

ORDER

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This Criminal Original Petition has been filed on 01.12.2020, under Section 482 of Code of Criminal Procedure, 1974 (2 of 1974) (hereinafter referred to as 'Cr.P.C.'), praying to set aside the order of dismissal passed by the learned Judicial Magistrate No.2, Madurai in Cr.M.P.No.2343 of 2020 in S.T.C.No.73 of 2016 and allow the Cr.M.P.No.2343 of 2020.

2. The petitioners herein are the husband and wife. Respondent-Police registered and filed a final report against the petitioners in Crime No.1308 of 2014 for the alleged offences under Section 294(b) and 323 of the Indian Penal Code, 1860 (45 of 1860) (hereinafter referred to as 'IPC'). The learned Judicial Magistrate took cognizance of the offences in S.T.C.No.73 of 2016. In the said S.T.C.No.73 of 2016, trial commenced and P.W.1 was examined in chief on 24.04.2018, P.W.5 was examined in chief on 18.02.2020 and P.W.6 was examined on 10.03.2020, after which prosecution evidence was closed. The petitioner's side did not cross examine P.W.1, P.W.5 and P.W.6, though



CrI.O.P.(MD).No.14232 of 2020

on those dates, petitioner's counsel was present before the Court.

Thereafter, the petitioner filed a petition under Section 311 of Cr.P.C., praying to recall the witnesses namely P.W.1, P.W.5 and P.W.6, in Cr.M.P.No.2343 of 2020. The learned Judicial Magistrate No.II, Madurai, after hearing both sides and relying upon the Hon'ble Apex Court dictum laid down in *Vinothkumar Vs State of Punjab*, dismissed the petition on 06.10.2020. Feeling aggrieved with the said order (hereinafter referred to as 'impugned order'), the petitioner has filed this petition under Section 482 of Cr.P.C.

3. Learned counsel for the petitioner submitted that petitioner's counsel was engaged in another Court, due to which petitioner's counsel was not able to examine P.W.1, P.W.5 and P.W.6. Further the counsel had to collect more information about the case. Now, the petitioners are ready to cross examine the witnesses. Further learned counsel submitted that the petitioners are ready to abide any conditions that may be imposed by this Court. Accordingly, he prayed to allow the petition.



Crl.O.P.(MD).No.14232 of 2020

WEB COPY

4. Per contra, learned Additional Public Prosecutor submitted that this petition has no merits. This Criminal Original Petition has been filed with a view to drag on the proceedings. Accordingly, learned Additional Public Prosecutor prayed to dismiss the Criminal Original Petition.

5. This Court has considered the submissions made by both sides. The respondent-police registered a case against the petitioners under Sections 294(b) and 323 of IPC. The said case has been taken on file as S.T.C.No.73 of 2016. In the said case, trial commenced and P.W.1 to P.W.6 were examined on the side of prosecution. It is submitted by the Additional Public Prosecutor that though the petitioner's counsel was present on the day of examination of the above said witnesses and he did not cross examine the witnesses only with a view to drag on the case and thereby won over the witnesses. In response to the above submissions, learned counsel for the petitioner denied the said argument and prayed to allow the petition.



Crl.O.P.(MD).No.14232 of 2020

6. Considering the nature of the offence alleged, this Court is of the view that one more opportunity shall be given to the petitioner to cross examine the witnesses. Hence, with a view to ensure fair trial and in the interest of justice, this Criminal Original Petition is allowed, subject to the following conditions:

i) The petitioner shall deposit a sum of Rs.7,500/- (Rupees Seven Thousand Five Hundred only) before the learned Judicial Magistrate No.II, Madurai, within a period of 10 days from the date of receipt of copy of this order.

ii) After the said deposit, learned Judicial Magistrate shall issue summons to P.W.1, P.W.5 and P.W.6 for appearance of the witnesses. On their appearance, the petitioner shall cross examine the witnesses on the same day. The petitioner should not seek any further adjournment. P.W.1, P.W.5 and P.W.6 are entitled each Rs.2,500/- (Rupees Two Thousand Five Hundred only) as 'Day cost / Diet Money'. Learned Judicial Magistrate No.II, Madurai, shall disburse the said amount to the three witnesses.



Crl.O.P.(MD).No.14232 of 2020

7. This Criminal Original Petition is allowed with the above terms.

Consequently, connected miscellaneous petition is closed.

24.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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Post Script:

(i) Upload forthwith

(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court, will be watermarked and will also have a QR code.

To

- 1.The Judicial Magistrate No.II, Madurai.
- 2.The Inspector of Police, Sellur Police Station, Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CrI.O.P.(MD).No.14232 of 2020

R.SAKTHIVEL, J.

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CrI.O.P.(MD).No.14232 of 2020
and
CrI.M.P(MD)No.6597 of 2020

24.11.2023