



WEB COPY



Criminal Original Petition No.5590 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Original Petition No.5590 of 2024

1. Seshasayanam,
S/o.Nagarajan

2. Krishnaveni,
W/o.Raguraman

... Petitioners

Vs.

State rep. by
The Inspector of Police,
DCB Police Station,
Tiruvannamalai.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside the order passed in CrI.M.P.No.8290 of 2023 in C.C.No.95 of 2021 subsequently recall the PW 1 and PW 4 to PW 19 in C.C.No.95 of 2021 on the file of the Judicial Magistrate I, Tiruvannamalai.

For Petitioners : Mr.M.Krishna Moorthy

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



Criminal Original Petition No.5590 of 2024

ORDER

WEB COPY This Criminal Original Petition has been filed challenging the order passed by the Court below in CrI.M.P.No.8290 of 2023 in C.C.No.95 of 2021, dated 12.02.2024, dismissing the application filed under Section 311 Cr.P.C. to recall PW-1, PW-4 to PW-19 for cross-examination.

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

3. The petitioners are arrayed as A3 and A4. It is seen from the order passed by the Court below that when these witnesses [PW-1, PW-4 to PW-19] were examined in chief before the trial Court for the reasons unknown, those witnesses were not cross-examined even though the petitioners and their counsel were present in the Court. Therefore, the Court below has come to a right conclusion that an application u/s.311 Cr.P.C. cannot be allowed as a matter of course. That apart, there is no reason assigned in the application filed u/s.311 Cr.P.C. as to why the petitioners were not able to cross-examine the witnesses when they



appeared before the Court and deposed.

4. Taking into consideration and facts and circumstances of the case and also the nature of defence that is sought to be taken by the petitioners, this Court deems it fit to give one opportunity to the petitioners to only recall PW-1, who is the *de facto* complainant in this case for cross-examination. The defence that is sought to be established by the petitioners need not be done by recalling each and every witness, who are also victims like PW-1. Therefore, recalling PW-1 for cross-examination itself will be a sufficient opportunity for the petitioners to establish their defence.

5. In the light of the above discussion, the order passed by the Court below is interfered to the extent that PW-1 shall be recalled and cross-examined on the same day of his appearance and the cross-examination shall be completed on the same day. If for any reason the petitioner fails to cross-examine PW-1 on the date of his appearance, the petitioner will loose his right to recall PW-1 in future.

N.ANAND VENKATESH, J.



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Criminal Original Petition No.5590 of 2024

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This Criminal Original Petition is disposed of in the above terms.

08.03.2024

Speaking Order/Non-speaking Order

Index : Yes/No

Neutral citation: Yes/No

gm

To

1. The Inspector of Police,
DCB Police Station,
Tiruvannamalai.

2. The Public Prosecutor,
High Court, Madras.

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