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Crl.O.P.No.16268 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.16268 of 2024

and

Crl.M.P.No.9912 of 2024

1.Saraswathi
2.Ponnusamy

... Petitioners

Vs.

1.State Rep.by
The Sub Inspector of Police,
Kamanaickenpalayam Police Station,
Palladam,
Tiruppur.
Crime No.78 of 2023

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order dated 02.05.2024 passed in Crl.M.P.No.2361 of 2024 in S.T.C.No.16 of 2024 on the file the learned Judicial Magistrate, Palladam.

For Petitioners : Mr.A.Tamilarasan

For Respondent : Mr.S.Udayakumar
Government Advocate (Crl.Side)

ORDER

The petitioner herein is the accused in S.T.C.No16 of 2024 which was taken cognizance by the Judicial Magistrate, Palladam on



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02.01.2024 for offence under Sections 294 B and 323 IPC.

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2. The prosecution has marshalled 5 witnesses on 25.04.2024 and they were examined as PW.1 to PW.5. On that day, the learned counsel for the petitioners/accused not well and therefore, cross examination of these witnesses could not be done. Recording no cross on the side of the accused, the learned Magistrate has closed their evidence and adjourned the matter for examination of further prosecution witness. Meanwhile, the petitioners had taken out an application under Section 311 Cr.P.C., to recall PW.1 to PW.5 to cross examine them. The said application been dismissed by the Judicial Magistrate stating that as per guidelines in numerous judgment of the Hon'ble High Court, this petition is untenable and not sustainable.

3. The learned counsel appearing for the petitioners/accused submits that in spite of assigning sufficient cause to recall PW.1 to PW.5 who were examined in chief, but could not be cross examined on the same day due to personal inconvenience of the counsel. The Judicial Magistrate without considering the reasons stated and without assigning justifiable reason for dismissing the petition has proceeded further to



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examine other witnesses of the prosecution.

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4. The learned Government Advocate (CrI.Side) appearing for the respondent police submits that out of 8 witnesses, prosecution has examined 5 witnesses, dispensed with examination of 2 witnesses and summon is issued to the Investigating Officer for his appearance on 08.08.2024.

5. Taking note of the fact that there is no reason assigned by the Judicial Magistrate for dismissing the application under Section 311 Cr.P.C., except stating that the accused not cross examined the witnesses on the same day, when they were chief examined. This Court finds that the said order is very cryptic and furthermore, the reason stated by the petitioners to recall the witnesses appears to be acceptable. Hence the order passed by the Judicial Magistrate in CrI.M.P.No.2361 of 2024 in S.T.C.No.16 of 2024 is set aside. The learned Judicial Magistrate is directed to cause summons for appearance of PW.1 to PW5 on 08.08.2024 and on their appearance, the petitioners shall cross examine them without seeking any adjournment, failing which the opportunity to cross examine will be forfeited. It is also directed that the Investigating



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Officer, to whom the summon was issued, should also be present on that day and the examination of Investigating Officer should be completed on the same day.

6. With this direction, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

11.07.2024

Index : Yes/No

Neutral Citation : Yes/No

rpl

To

1.The Judicial Magistrate, Palladam.

2.The Sub Inspector of Police,
Kamanaickenpalayam Police Station,
Palladam,
Tiruppur.

3.The Public Prosecutor,
High Court of Madras,
Chennai.

Dr.G.JAYACHANDRAN,J.

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