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Crl. O.P.No.24456 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.10.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.24456 of 2024

and

Crl.MP.No.13788 of 2024

1. Kirubakaran
2. Vijayalakshmi
3. Sathiyandarayanan

.. Petitioners

Vs.

The State Rep by
The Inspector of Police,
Kamanaickanpalayam Police Station,
Tiruppur District.

.. Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023 to set aside the order dated 13.06.2024 made in CMP.No.3334 of 2024 in C.C.No.134 of 2019 on the file of Judicial Magistrate, Palladam.

For Petitioner : Mr.P.Saravana Sowmiyan

For Respondent : Mr.K.M.D.Muhilan
Government Advocate (Crl.Side)



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ORDER

The petitioners herein are accused in C.C.No.134 of 2019 facing trial for offence under Sections 294(b), 323 and 506(i) of IPC, 1860 and Section 4 of Tamilnadu Prohibition of Harassment of Woman Act, 2002.

2. P.W.1 to P.W.7 in this case were examined in chief on 25.04.2024. The accused neither cross examined them nor filed application for deferring the cross. Thereafter, the prosecution has marshalled further witnesses.

3. The petitioner had earlier filed an application to re-call P.W.1 to P.W.7, the same was dismissed referring Section 309 of Cr.P.C and citing the Supreme Court Judgement that the defence ought to cross examine the witness on the same day of chief examination. However, the second application after examining P.W.8 is filed through P.W.8, since two documents were marked and the accused has thought fit that the documents marked through P.W.8 has given the changed circumstances to recall P.W.1 to P.W.7.



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4. The learned counsel appearing for the petitioners not able to co-relates the documents alleged to have been marked through P.W.8 and the witnesses P.W.1 to P.W.7, however, he submits that these documents have disclosed that there was previous enmity between the defacto complainant's family and the petitioners' family. Hence, it is necessary for a fair decision to recall of P.W.1 to P.W.7.

5. The perusal of the impugned order indicates that the trial in the case has been commenced after five years and witnesses were marshalled by the prosecution. The two documents which are marked during the cross examination of P.W.8 on 16.05.2024 cited as the reason for recall being a changed circumstances.

6. The learned Government Advocate (Crl.Side) appearing for the respondent police submits that P.W.8 who is Sub Inspector of Police attached to Kamanaickanpalayam Police Station, Tiruppur District. Now, those two documents will give a reason to recall the seven witnesses earlier not explained. Hence, the order of the trial Court which states that



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sufficient time was given to the learned counsel for the accused to cross examine witnesses, but, he did not come forward to cross examine and merits for consideration.

7. On examining the impugned order, the reason to recall the witnesses, this Court finds no sufficient and bereft of merits. Hence, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

03.10.2024

Vv

To

1. The Judicial Magistrate,
Palladam
2. The Inspector of Police,
Kamanaickanpalayam Police Station,
Tiruppur District.
3. The Public Prosecutor,
High Court of Madras.



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Dr.G.JAYACHANDRAN,J.

Vv

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