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Crl.O.P.No.27256 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2024

CORAM

THE HONOURABLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.O.P.No.27256 of 2024

1.Subbraya Gownder
2.Kannammal
3.Amuthavalli

... Petitioners/A1 to A3

Vs.

State Represented by
The Inspector of Police,
Avinashipalayam Police Station,
Tiruppur, Tiruppur District.
(Crime No.170 of 2014).

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 praying to set aside the order dated 14.08.2024 passed by the learned Judicial Magistrate, Palladam in C.C.No.358 of 2014 and allow this petition.

For Petitioners : Mr.P.Kalimuthu

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

ORDER

This Criminal Original Petition is filed seeking to set aside the order dated 14.08.2024 passed by the learned Judicial Magistrate, Palladam in C.C.No.358 of 2014.



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2.The petitioners, who are accused 1 to 3 facing trial in C.C.No.358 of 2014 for offence under Sections 294(b), 324 and 506(ii) of I.P.C., had filed a petition under Section 348 of BNSS to recall PW1 to PW5 for cross examination. The learned Additional Public Prosecutor made an endorsement as “may be allowed on terms”. Despite no serious objection made by the learned Additional Public Prosecutor, the trial Court dismissed the petition for the reason that PW1 to PW4 examined in chief on 07.08.2018 and PW5 examined on 20.05.2023 and with such delay, the petition has been filed.

3.The learned counsel for petitioners submitted that this reasoning given by the trial Court may not be proper, since in this case the de-facto complainant is none other than the husband of third petitioner. There is a matrimonial discord between them. The petitioners 1 and 2 are the father and mother of the 3rd petitioner. The matrimonial dispute has been given criminal colour and a false case registered against them. Further submitted that before the Family Court the matrimonial case is proceeding simultaneously and now there is a likelihood of settlement. In



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the event of the same, the criminal case would also get withdrawn. In such circumstances, the legal witnesses PW1 to PW5 is necessary to arrive at a just decision of the case.

4.The learned Government Advocate opposed the petitioners' contention and submitted that in this case PW1 to PW4 are examined on 07.08.2018. Thereafter, witnesses were not examined giving sufficient time. Thereafter, PW5 was examined on 20.05.2023. In between, there was irregular Court proceedings due to Corona. He further submitted that petitioners earlier filed Section 311 Cr.P.C. petition and the same was dismissed on 07.03.2024. Within a period of five months thereafter the second petition was filed. He further admitted that de-facto complainant is the husband of 3rd petitioner and there is a matrimonial discord between them. He further submitted that in the event of witnesses are recalled, sufficient cost to be imposed.

5.The learned counsel for petitioners submitted that the petitioners will not be a reason for further delay and they shall cross examine the witnesses on the same day, when they appear.



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7.In view of the same, to give one more opportunity to the petitioners, the impugned order dated 14.08.2024 passed by the learned Judicial Magistrate, Palladam in C.C.No.358 of 2014 is set aside. The witnesses PW1 to PW5 are directed to be recalled and to be examined. The petitioners shall pay the cost of Rs.500/- to each of the witnesses. The petitioners to deposit the amount of Rs.2,500/- on or before next hearing date, i.e., 06.11.2024, file process application and thereafter the witnesses to be produced by the respondent police. On the date of their



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appearance, without giving any reason witnesses to be cross examined then and there. The remaining three more witnesses thereafter to be examined and trial to be completed. In any event, the case itself to be completed within a period of four months from the date of receipt of a copy of this order.

8. With the above directions, the Criminal Original Petition is allowed.

30.10.2024

Index : Yes/No
Internet: Yes/No
Neutral Citation : Yes/No
Speaking order/Non-speaking order
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To

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



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M. NIRMAL KUMAR, J.

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