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Crl.O.P.No.28408 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.28054 of 2023
and Crl MP No.19483 of 2023

1. Jawahar Paulraj

2. Arunagiri Selvam

... Petitioner/Petitioner /Accused
Vs.

State Rep. by
The Inspector of Police,
CCB Police,
Coimbatore City,
Coimbatore.

Crime No.28 of 2011

... Respondent/Respondent/Complainant

Criminal Original Petition under Section 482 of the Criminal Procedure Code praying to set aside the order passed in CMP No.36795 of 2023 in CC No.537 of 2012 passed by the on the file of Hon'ble Judicial Magistrate Court VII, Coimbatore.

For Petitioners : Mr.M.K.Bhoopathy Rajan
For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

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This petition has been filed challenging the order passed by the Court below in C.M.P.No.36795 of 2023 in CC No.537 of 2012 dated 05.10.2023, dismissing the application filed by the petitioner under Section 311 of Cr.PC to recall PW1 to PW11 for cross-examination.

2. Heard Mr.M.K.Bhoopathy Rajan, learned Counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the respondent.

3. The petitioner is facing trial before the Trial Court for offence under Section 408 and 420 of IPC. The prosecution had examined PW1 to PW11 during the span of period from 2018 to 2023. None of these witnesses were cross-examined by the petitioner. In the year 2023, the present application came to be filed for recalling PW1 to PW11 for cross examination. This application was dismissed by the Court below by relying upon the judgement of the Apex Court in Vinod Kumar Vs. State of Punjab reported in *Vinod Kumar Vs State of Punjab [2015 (1) MLJ (Crl) 288*



SCJ. Aggrieved by the same, the present Criminal Original petition has been filed before this Court.

4. The learned Additional Public Prosecutor submitted that the case is now posted on 30.01.2024 for cross-examination of LW21 to LW24.

5. This Court has carefully went through the order passed by the Court below. It is does not suffer from any illegality or infirmity. However, without the cross-examination of the witnesses, the petitioners will never be able to establish their defence. Hence, this Court is inclined to give one opportunity to the petitioners by putting them on condition.

6. The order passed by the Court below in C.M.P No.26795 of 2023 dated 05.10.2023, is hereby set-aside. There shall be a direction to the petitioners to deposit cost of Rs.5,000/-, for each witness insofar as PW1 to 9 are concerned and cost of Rs.2,500/- with respect to PW10 to PW12. This cost shall be deposited before the Court below on or before 30.01.2024. On such deposit of cost, the Court below shall recall these witnesses and fix a date for their cross-examination. If the petitioner does not deposit the cost



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within the time framed by this Court, the order passed in CMP No.36795 of 2023 in CC No.537 of 2012 dated 05.10.2023 will stand revived. If the petitioner pays the cost and the witnesses are recalled, the petitioner shall cross-examine these witnesses on the same day of their appearance. If for any reason, the petitioners do not cross-examine any of the witnesses on the date of their appearance, the petitioners will lose their right to recall those witnesses for cross examination. It is also made clear that the other witnesses who are examined on the side of the prosecution, shall be cross-examined on the same day they are examined in chief.

7. This Criminal Original Petition is disposed of with a direction to the Court below to complete the proceedings in CC No.537 of 2012 within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

10.01.2024

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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Note : Issue order copy on 12.01.2024

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To
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1. Judicial Magistrate Court VII, Coimbatore.
2. The Public Prosecutor, High Court, Madras



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