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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.29275 of 2023
and Crl.M.P.No.20282 of 2023

1.Kartheeban S/o. Natesan
2.Ramamoorthy S/o. Govindaraj ...Petitioners/Accused

Vs.

The State rep by
The Inspector of Police,
Ariyoor Police Station,
Vellore District.
(Crime No.96 of 2021) ...Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order in Crl.M.P.No.8797 of 2023 in S.T.C.No.178 of 2022 on the file of the learned Judicial Magistrate No.I, Vellore.

For Petitioners	: Mr.G.Vinodhkumar
For Respondent	: Mr.A.Damodaran Additional Public Prosecutor

**ORDER**

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This petition has been filed challenging the dismissal order passed by the Judicial Magistrate I, Vellore, filed by the petitioner under Section 311 of Cr.P.C., in CrI.M.P.No.8797 of 2023 in STC.No.178 of 2022 dated 26.10.2023, for examining the Manager of Sundaram Finance, Vellore Branch and the Branch Manager of Indian Bank, Sathuvachari Branch as defence witnesses.

2.The petitioners are facing trial before the Court below for the offence under Sections 294(b), 353, 171E & 506(i) of IPC. The case of the prosecution is that the petitioners were in possession of a sum of Rs.17,000/- along with pamphlets belonging to a particular political party during the election time and they were standing near the bus stand in a suspicious manner. When they were questioned, they restrained the public servants doing their work and also abused them in filthy language. Since they did not provide any reason for possessing money, it was taken that they were in possession of money only for bribing during the election time.

3.The prosecution had examined ten witnesses and all these



witnesses were cross-examined on the side of the petitioners. After the completion of the examination, the petitioners were also questioned under Section 313(1)(b) of Cr.P.C., and they denied the same as false.

4.The petitioners wanted to examine two defence witnesses on their side to establish as to why they were in possession of money on that particular date. This application was dismissed by the Court below mainly on the ground that the petitioners had taken a stand that they were not present in the scene of crime and no money was seized from them. In view of the same, the Court below found that there was no reason to examine these two witnesses as defence witnesses. Aggrieved by the same, the present petition has been filed before this Court.

5.Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the respondent.

6.The learned counsel for the petitioners submitted that the entire prosecution case was based on assumptions and surmises and the



investigation itself was not properly conducted in this case which is apparent from the evidence of the Investigation Officer. The learned counsel for the petitioners further submitted that the reasoning given by the Court below as if the petitioners took a stand denying the very presence in the scene of crime and the seizure of the amount, is unsustainable since no such defence was taken by the petitioners. To substantiate the same, the learned counsel for the petitioners also relied upon the deposition of P.W.1 to P.W.10.

7.This Court is carefully considered the submissions made on either side and materials available on record.

8.The only reason as to why the Court below had dismissed the application was on the premise that the petitioners had specifically denied their presence in the scene of crime and denied the seizure of the amount from them. However, on carefully going through the deposition, it is seen that no such defence has been raised by the petitioners.

9.The petitioners want to establish the reason for possessing the money on the relevant day by examining the Manager of the Finance



Company and the Manager of the Bank. One opportunity must be given to the petitioners to establish their defence considering the nature of allegations that have been made against the petitioners. In other words, the reason as to why the petitioners were in possession of money must be explained by the petitioners and for that, they must be given an opportunity.

10. In the light of the above discussion, the order passed by the Court below in CrI.M.P.No.8797 of 2023 in STC.No.178 of 2022 dated 26.10.2023 is hereby set aside. The Court below shall issue summons to the two defence witnesses sought to be examined on the side of the petitioners. These witnesses shall be examined and the recording of their evidence shall be completed as expeditiously as possible.

11. In the result, this Criminal Original Petition is allowed and there shall be a direction to the Court below to complete the proceedings in STC.No.178 of 2022, within a period of three months from the date of receipt of a copy of this order. Consequently, connected Criminal



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Miscellaneous Petition is closed.

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Index: Yes/No

Internet: Yes/No

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1.Judicial Magistrate No.I, Vellore.

2.The Inspector of Police,
Ariyoor Police Station,
Vellore District.

3.The Public Prosecutor,
High Court, Madras.

N.ANAND VENKATESH.J.,

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