



Crl.O.P.(MD) No.1659 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.1659 of 2024

1.M.K.Kannan

2.M.Kalipillai

3.Hema latha @ Radha

4.M.K.Kandhan

...Petitioners

VS

The Inspector of Police,
All Women Police Station,
Colachel,
Kanyakumari District.
Crime No.13 of 2009

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records and set aside the order passed in Crl.M.P.No. 1598 of 2023 in CC.No.182 of 2018 dated 10.10.2023 on the file of the Judicial Magistrate, Fast Track Court, Eraniel.

For Petitioner : Mr.N.Sudhagar Nagaraj
For Respondent : Mr.B.Thanga Aravindh
Government Advocate (Crl.side)



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ORDER

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The learned Counsel for the Petitioners submits that the Petitioners had filed this Criminal Original Petition seeking to set aside the order passed in Crl.M.P.No.1598 of 2023 in CC.No.182 of 2018 dated 10.10.2023 on the file of the learned Judicial Magistrate, Fast Track Court, Eraniel.

2.It is the submission of the learned Counsel for the Petitioners that the Petitioners themselves had approached this Court under Section 482 of Cr.P.C., seeking directions for early disposal of the case. When P.W1 was examined, the Petitioners were unable to cross-examine the P.W1. Subsequently, they had filed Crl.M.P.No.1598 of 2023 under Section 311 Cr.P.C. to re-call the P.W1 for cross-examination, which was dismissed by the learned Judicial Magistrate, Fast Track Court, Eraniel, vide order dated 10.10.2023. It is the further submission of the learned Counsel for the Petitioners that if the Petitioners are given an opportunity, they will re-call the witness and cross-examine him on the same day without any delay.



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3.The learned Government Advocate (Crl.side) vehemently object to the same stating that the learned Judicial Magistrate, Fast Track Court, Eraniel had in the order given the details that in Crl.O.P.(MD) No.7904 of 2023 ,this Court had directed the learned Judicial Magistrate to complete the trial in CC.No.182 of 2018 within a period of five months from the date of receipt of a copy of the order. Also, the learned Government Advocate (Crl.side) relied on the observations of the learned Judicial Magistrate, Fast Track Court, Eraniel in the order dated 10.10.2023, wherein in paragraph No.9, the learned Judicial Magistrate, Fast Track Court, Eraniel, had observed that earlier an application was filed in Crl.M.P.No.1368 of 2023. Even though the learned Judicial Magistrate, Fast Track Court, Eraniel was aware of the risk of violating the reported ruling of the Hon'ble Supreme Court in the case of ***Vinod Kumar Vs. State of Punjab*** reported in ***CDJ 2015 SC 115***, he imposed heavy cost and allowed Crl.M.P.No.1368 of 2023 by affording an opportunity to the Petitioners to complete the cross-examination of the witnesses. After getting the favorable order, the Petitioners had wantonly delayed issuing summons to the witnesses and the witnesses were summoned on 04.10.2023, on which date the learned Counsel for the accused had not cross-examined the witnesses. Once again,



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a similar Petition had been filed. Therefore, quoting the reported ruling of the Hon'ble Supreme Court in ***Vinod Kumar Vs. State of Punjab*** reported in ***CDJ 2015 SC 115***, the learned Judicial Magistrate, Fast Track Court, Eraniel, had dismissed the Petition as a second petition for the same relief to re-call and cross-examine the witnesses.

4.The order of the learned Judicial Magistrate, Fast Track Court, Eraniel, cannot at all be considered perverse. It is a well reasoned order, as per the reported ruling of the Hon'ble Supreme Court, which was circulated by the Hon'ble Supreme Court to all the Hon'ble High Courts across the country with a direction to circulate it across the respective States to all the Trial Judges in the State with a warning to the Trial Judges that any deviation will be viewed seriously attracting disciplinary proceedings against the Judges concerned. Under those circumstances, the learned Judicial Magistrate, Fast Track Court, Eraniel had taken the risk and permitted the Petitions filed under 311 Cr.P.C. to re-call the witnesses. The witnesses were re-called, but were not cross-examined. That shows that the Petitioners, who are the accused, wanted to delay the trial even though they had obtained an order from the Court for early disposal of the case.



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5.The submission of the learned Counsel for the Petitioners that one more opportunity may be given for cross-examining the witnesses cannot at all be considered by this Court, as the learned Counsel, who appeared before the High Court and the learned Counsel, who appeared before the trial Court, are different.

6.It is a curse of the Criminal Justice System that the system is favorable to the accused only and not to the victim of crime or to the witnesses. The witnesses, who volunteer to act as witnesses are harassed by the procedure of re-calling the witnesses every now and then. Therefore, off late, in criminal cases, when the investigation proceeds, the people, who have knowledge about the crime, are not willing to help the Investigating Officers in completing the investigation. Even after the investigation is completed, when the summons are sent to the witnesses, they are reluctant to appear before the Court, as they are harassed repeatedly under the pretext of re-call and cross-examination.



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7. In spite of the reported ruling of the Hon'ble Supreme Court in the case of ***Vinod Kumar Vs. State of Punjab*** reported in ***CDJ 2015 SC 115*** that any deviation will be viewed seriously, now the risk is on the Trial Judges concerned. They face the disciplinary proceedings for the conduct of the Members of the Bar, who act as per the instructions of the accused. Now, the Judicial Officers have to face the risk. The learned Counsel, who appeared before the Trial Courts, are appearing on memo of appearance, whereas in civil cases, the advocates are appearing on filing of Vakalat, where there is accountability on the law profession. When they appear on memo of appearance, there is no accountability. It is for the respective High Courts to amend the Rules regarding criminal trial. Until, then it is a curse on the Trial Judges, who have to face the disciplinary proceedings for violation of the reported ruling of the Hon'ble Supreme Court, for which the High Courts had circulated the judgments and obtained acknowledgment from the individual Judicial Officers. In the light of those developments, this Court exercising the powers under Section 482 of the Code of Criminal Procedure cannot dilute the judgment of the Hon'ble Supreme Court regarding re-call of the witnesses.



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8.In the light of the above, this Criminal Original Petition is dismissed with cost as the Petitioners herein had already obtained directions from the High Courts for the trial Court to dispose of the case within the reasonable period of 5 months and they themselves protract the proceedings. The Petitioners shall pay a sum of Rs.500/- to the credit of CC.No.182 of 2018 dated 10.10.2023 on the file of the learned Judicial Magistrate, Fast Track Court, Eraniel.

Internet:Yes./No

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Index:Yes/No

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To

- 1.The Inspector of Police,
All Women Police Station,
Colachel,
Kanyakumari District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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