



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2024

CORAM

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

Crl.O.P(MD)No.2935 of 2023

1. Pangajam

2. R.Giri

... Petitioners

Vs

The Inspector of Police,
District Crime Branch Police Station,
Theni District.
Cr. No. 61/10.

... Respondent

PRAYER: Criminal Original petitions have been filed under Sections 439 (1) (b) of the Code of Criminal Procedure, to call for the records pertaining to the order dated 08.12.2022 made in Crl.M.P NO. 6964/2022 in C.C No. 15/2015 on the file of the Learned Judicial Magistrate at Theni and set aside the same in so far as the rejection of recalling and prosecution witness P.W. 2.

For Petitioner : Mr.K.Anbumanikandan

For Respondent :Mr.A.Albert James
Government Advocate (Crl.Side)



WEB COPY

ORDER

This criminal original petition has been filed challenging the proceedings of the learned Judicial Magistrate, Theni in Cr.M.P.No.6964 of 2022 in C.C.No.15 of 2015, dated 08.12.2022 filed under Section 311 Cr.P.C to recall the witnesses P.W.2 and P.W.10 for cross examination, which was partly allowed by permitting to recall the witness P.W.10 and dismissing the application insofar as witness P.W.2 is concerned.

2.Heard the learned Counsel appearing on either side.

3.The petitioners are facing trial before the Court below for the offences under Sections 468, 471 and 420 IPC. The prosecution examined the witnesses on its side. The witness P.W.2 was examined in chief on 08.09.2017 and the petitioners cross examined P.W.2 on 06.12.2020. Insofar as P.W.10 is concerned, the petitioners did not cross examine this witness. Hence the petitioners filed a petition under Section 311 Cr.P.C. to recall the witnesses P.W.2 and P.W.10 for cross examination. The Court



below partly allowed the petition insofar as witness P.W.10 is concerned and dismissed the petition for the witness P.W.2.

4.The learned Counsel appearing for the petitioners submitted that if one opportunity is given to the petitioners, the witness P.W.2 can be cross examined on the same day.

5.The learned Government Advocate (Crl.Side) appearing for the respondent police submitted that the witness P.W.2 has already been cross examined by the petitioners and that the case is now at the stage of examination of the investigation officer. He further submitted that the cross examination of the witness P.W.10 is also pending.

6.Taking into consideration the facts and circumstances of the case and considering the seriousness of the charges for which the petitioners are facing trial, this Court is inclined to grant one opportunity to the petitioners to recall the witness P.W.2 for further cross examination on payment of cost. On such payment of cost, the petitioners will be permitted to cross examine P.W.2 and the cross examination shall be completed on the same day. If for any reason, the petitioners fails to cross examine the witness



WEB COPY

P.W.2 on the date of appearance, the petitioners will forfeit their right to recall the witness in future.

7.In view of the above, the order passed by the Court below in Cr.M.P.No.6964 of 2022, dated 08.12.2022, dismissing the application insofar as witness P.W.2 is concerned, is hereby set aside. The Court below is directed to issue summons to the witness P.W.2 and on appearance of the witness P.W.2, the petitioners shall pay the cost of Rs.3,000/- to the witness.

8.In the result, this criminal original petition is allowed and there shall be a direction to the learned Judicial Magistrate, Theni to complete the proceedings in C.C.No.15 of 2015, within a period of four months, from the date of receipt of a copy of this order.

18.11.2024

Internet :Yes
Index :Yes/No
NCC :Yes/No
LR

To

1.The Judicial Magistrate, Theni.



2.The Inspector of Police,
District Crime Branch Police Station,
Theni District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



N.ANAND VENKATESH, J.

LR

Crl.O.P(MD)No.2935 of 2023

18.11.2024