



CRL.O.P (MD) No.3360 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 03.04.2024

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CRL.O.P (MD) No.3360 of 2024

1. Ganesan @ Vellaiyan,

2. Ganaguru

... Petitioners

Vs

1. State represented by
The Deputy Superintendent of Police,
Rajapalayam Sub Division,
Virudhunagar District.

2. State represented by
The Sub Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District.
(Crime No.584 of 2015)

3. Muneeswari

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records and set aside the order passed by the Court of the Sessions Judge, Special Court for Trial of SC/ST (POA) Act cases, Virudhunagar District at Srivilliputhur in Cr.M.P.No.4363 of 2023 in Special S.C.No.34 of 2016 on 09.01.2024 and allow this Criminal Revision Petition.

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CRL.O.P (MD) No.3360 of 2024

For Petitioners : Mr.M.Jothi Basu

For R-1 & R-2 : Mr.M.Sakthi Kumar
Government Advocate (Crl. side)

ORDER

This criminal original petition has been filed seeking to set aside the order passed by the Court of the Sessions Judge, Special Court for Trial of SC/ST (POA) Act cases, Virudhunagar District at Srivilliputhur in Cr.M.P.No.4363 of 2023 in Special S.C.No.34 of 2016 on 09.01.2024.

2.The learned Counsel for the petitioners submits that they failed to cross-examine P.W.2 when he was available for chief examination on 13.07.2023. The petitioners have filed an application under Section 311 of Cr.P.C on 11.12.2023 to recall P.W.2 with a reason that since the Counsel for the petitioners had to peruse certain important documents to establish the petitioners' case, he could not cross-examine P.W.2 on the particular date. The said application was dismissed by the trial Court by referring a judgment of the Hon'ble Supreme Court in the case of ***Vinod Kumar vs State of Punjab in 2015(1) MLJ (crl) 288 (SC)***,. In the said



CRL.O.P (MD) No.3360 of 2024

judgment, an application for cross-examination was made after a year and eight months. Therefore, the Hon'ble Supreme Court has issued certain directions in that case and that case cannot be equated to the case where the petitioners are facing serious offence under Section 302 of IPC r/w 3(2)(v) of SC & ST (POA) Act, 1989. The P.Ws were examined in chief on 13.07.2023 and the application to recall the P.W.2 was filed in the month of December 2023.

3.Though this Court is not appreciating the manner in which the application is filed, this Criminal Original Petition is allowed with a cost of Rs.25,000/-, which has to be paid to the witness P.W.2 by the petitioners. The trial Court shall fix the date of hearing for examination of P.W.2 and the same shall be informed to the petitioners in advance.

NCC : Yes/No
Internet: Yes/No
Index: Yes/No
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03.04.2024



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CRL.O.P (MD) No.3360 of 2024

B.PUGALENDHI, J.

jbr

To

1. The Deputy Superintendent of Police,
Rajapalayam Sub Division,
Virudhunagar District.

2. The Sub Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District.

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

CRL.O.P (MD) No.3360 of 2024

03.04.2024