



CrI.O.P.(MD) No.4371 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.4371 of 2024

and

CrI.M.P.(MD) No.3442 of 2024

1.Asoak Kumar

2.Anbu @ Anburaj

3.Sakthivel

...Petitioners

VS

The Inspector of Police,
Dhadikombu Police Station,
Dindigul District.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records pertaining to the order dated 29.01.2024 made in CrI.M.P.No.2749 of 2023 in SC.No.276 of 2018 pending on the file of the learned Additional District and Sessions Judge, Dindigul and set aside the same.

For Petitioners : Mr.M.Suresh
For Respondent : Mr.B.Thanga Aravindh
Government Advocate (CrI.side)



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ORDER

The learned Counsel for the Petitioners submits that the Petitioners are arraigned as A1 to A3 in S.C.No.276 of 2023 pending on the file of the learned Additional District and Sessions Judge, Dindigul. It is his contention that all the witnesses in the prosecution case had been examined by the prosecution, but the Petitioners herein/A1 to A3 had not exercised their right of cross-examination. The petition filed under Section 311 Cr.P.C. in Cr.M.P.No.2749 of 2023 was dismissed by the learned Additional District and Sessions Judge, Dindigul on 29.01.2024. It is the contention of the learned Counsel for the Petitioner that the earlier Counsel engaged by the Petitioners herein had not cross-examined the witnesses, P.W1 to P.W4, P.W6 and P.W7 and P.W14 to P.W17 on the date when they deposed evidence. The petition was filed to re-call P.W1 to P.W4, P.W6 and P.W7 and P.W14 to P.W17. It is his further contention that the accused 1 to 3 had engaged different Counsel now. The new Counsel had filed a petition under Section 311 Cr.P.C.,



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2.On perusal of the order passed by the learned Additional District and Sessions Judge, Dindigul, it is found that the learned Judge had observed the conduct of the accused 1 to 3. The accused 1 to 3 had invariably left it at NBW and later, they cancelled it. At the stage of defense witnesses after 313 Cr.P.C. proceedings, the accused 1 to 3 had filed a petition seeking re-call the witnesses. It is to be noted that the Hon'ble Supreme Court had deprecated the practise of recalling the witnesses in criminal trials. Even though it is a case under Section 302 IPC, the learned Counsel appearing for the accused had not shown due diligence required from the profession.

3.The Constitution of India guarantees rights to its citizens to speedy trial and rights to fair trial. Under the principles of fair trial, the Court grants sufficient time for the accused to cross-examination. It has been taken for ride, as though the Court is constituted to consider the right of the accused alone and not the right of the victims of crime. The learned Additional District and Sessions Judge, Dindigul had dismissed the petition quoting the rulings of the Hon'ble Supreme Court. It is to be noted that in the reported decision of the Hon'ble Supreme Court in ***Vinod Kumar Vs. State of***



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Punjab reported in **CDJ 2015 SC 115**, the Hon'ble Supreme Court had deprecated the practise and also quoted the earlier rulings of the Hon'ble Supreme Court regarding the power to re-call the witnesses and a warning is given to the trial Judges that the power under Section 311 Cr.P.C. shall not be leniently exercised. Therefore, in the reported ruling in **Vinod Kumar Vs. State of Punjab** reported in **CDJ 2015 SC 115**, there was a request from the Hon'ble Supreme Court to all the High Courts in the country to circulate the said judgment to the trial Judges across the territory under the respective High Courts. After this judgment was circulated through out the District Judiciary to the trial Judges, the trial Judges have been alert not to grant leniency to the accused. Still, the practise is followed among the Counsel practising in trial side to re-call the witnesses to the whims and fancies of the accused. That cannot be allowed in this case. The learned Additional District and Sessions Judge, Dindigul even though had dismissed the petition, he had not quoted the ruling of the Hon'ble Supreme Court. If that is allowed, it amounts to dilution of the ruling of the Hon'ble Supreme Court, which the Hon'ble Supreme Court had deprecated and issued directions to the respective High Courts to circulate the judgment to all the trial Judges through out the country.



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4. Under those circumstances, the request of the Petitioner seeking to set aside the order of the learned Additional District and Sessions Judge, Dindigul cannot at all be entertained. The Petitioners/A1 to A3 had not co-operated with the trial Court. Therefore, this Court exercising powers under Section 482 of Cr.P.C., cannot dilute the judgment of the Hon'ble Supreme Court.

In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Internet: Yes./No
Index: Yes/No
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20.03.2024

To

1. The Inspector of Police,
Dhadikombu Police Station,
Dindigul 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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