



CrI.O.P.(MD) No.5309 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2024

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CRL.O.P (MD) No.5309 of 2024

1. Murugesan,
2. Meerabai,
3. Senthilkumar,

... Petitioners

Vs

The State represented by
The Inspector of Police,
Allinagaram Police Station,
Theni District.
(Crime No.19 of 2010).

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the entire records pertaining to the order passed by the Learned Judicial Magistrate, Theni in Cr.M.P.No.5475 of 2023 in C.C.No. 378 of 2013 dated 08.01.2024 and set aside the same and consequently direct the said learned Judicial Magistrate, Theni to recall the 1 to 7 witness.



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For Petitioners : Mr.S.Balaji

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This criminal original petition has been filed seeking to set aside the order passed by the learned Judicial Magistrate, Theni, in Cr.M.P.No.5475 of 2023 in C.C.No.378 of 2013 dated 08.01.2024 and consequently direct the learned Judicial Magistrate, Theni, to recall the P.W.1 to P.W.7.

2.The learned Counsel for the petitioners submits that the learned Judicial Magistrate rejected the application filed by the petitioners under Section 311 Cr.P.C., to recall the witnesses P.W.1 to PW7 for the purpose of cross examination. The petitioners are accused and facing a trial before the learned Judicial Magistrate, Theni, in C.C.No.378 of 2013, for the offences under Sections 465, 468, 471, 420 and 120(b) IPC. The FIR was registered in the year 2010. The final report was filed in the year 2013.

3.The prosecution witnesses were examined as under:

P.W1 and P.W 2 were examined on 01.10.2019; P.W 3 and P.W 4



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were examined on 29.01.2020; P.W.5 and P.W.6 were examined on 01.04.2021 and P.W.7 was examined on 21.10.2021.

4.The petitioners through an Advocate had neither cross examined those witnesses at the time of their evidence nor filed any application to defer the cross-examination. A petition under Section 311 Cr.P.C was filed only in the year 2023 on the ground that it was due to COVID -19, the petitioners failed to cross examine the witnesses. The trial Court considered that the petitioners only to protract the trial, filed the petition and dismissed the same, against which, this petition has been filed.

5.This Court is of the view that the case of the year 2013 is pending at the stage of trial. Though the witnesses have to be examined in the year 2019, the petitioners have filed this application by referring to COVID-19. This Court is not inclined to entertain this petition. However, in order to provide an opportunity to the petitioners herein, this criminal original petition is disposed of with a direction to the petitioners to pay a sum of Rs. 5000/- to each of the witnesses (P.W.1 to P.W.7), on or before 03.05.2024. In the event, if the petitioners pay the amount to the said witnesses on or



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before 03.05.2024, the trial Court shall recall those witnesses for the purpose of cross examination. If the petitioners have failed to use this opportunity, the trial Court shall proceed further and dispose of the case in C.C.No.378 of 2013, on its own merits.

05.04.2024

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

LR

To

1.The Judicial Magistrate,
Theni.

2.The Inspector of Police,
Allinagaram Police Station,
Theni District.

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



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B.PUGALENDHI, J.

LR

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