



WEB COPY



CrI.O.P.No.19825 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM :

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.19825 of 2023
and CrI.M.P.No.13414 of 2023

1. Kamalanathan
2. Sabhari .. Petitioners

Versus

State By:-
The Inspector of Police,
Central Crime Branch,
Tiruppur City.
(Crime No.12 of 2000) .. Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order, dated 20.03.2023 made in E.C.M.P.No.2099 of 2023 in C.C.No.964 of 2023 on the file of the learned Judicial Magistrate No.I, Tiruppur.

For Petitioners : Mr.S.Lakshmanasamy for
for Mr.P.M.Duraiswamy

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This petition has been filed against the order passed by the Court below dismissing the application filed under Section 311 of Cr.P.C., to



CrI.O.P.No.19825 of 2023

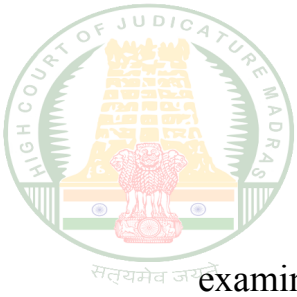
recall P.W.9 for cross-examination in C.M.P.No.2099 of 2023, dated
20.03.2023.

WEB COPY

2. The petitioners are facing trial before the Court below for offences under Sections 467, 468, 471, 420 and 120B of I.P.C. P.W.9 is the Investigation Officer and he was examined in chief on 14.02.2023. For some reason, he was not cross-examined on the side of the petitioners. Hence, an application came to be filed in C.M.P.No.2099 of 2023 on 22.02.2023 under Section 311 of Cr.P.C., to recall P.W.9 for cross-examination. This application came to be dismissed by the Court below by an order, dated 20.03.2023. Aggrieved by the same, the present petition has been filed before this Court.

3. Heard Mr.S.Lakshmanasamy, learned Counsel for the petitioners and Mr.A.Damodaran, learned Counsel for the respondent.

4. It is clear from records that P.W.9 was examined in chief on 14.02.2023 and he was not cross-examined on the side of the petitioners. The application was filed on 22.02.2023 to recall P.W.9 for cross-



Crl.O.P.No.19825 of 2023

WEB COPY

examination and this application was dismissed by an order, dated 20.03.2023. For some strange reasons, the petitioners once again filed an application in C.M.P.No.10387 of 2023 seeking for the very same relief and curiously, the petitioners do not reveal about the earlier application filed in C.M.P.No.2099 of 2023. Hence, the subsequent application filed in C.M.P.No.10387 of 2023 was dismissed by the Court below by order, dated 26.07.2023.

5. After the above order has been passed and when the case is at the stage of pronouncing the judgment, the present petition was filed before this Court on 22.08.2023 challenging the order passed in C.M.P.No.2099 of 2023, dated 20.03.2023.

6. In the considered view of this Court, the attitude of the petitioners in this case is highly questionable. If the petitioners are aggrieved by the dismissal of the application filed in C.M.P.No.2099 of 2023, they should have questioned that order by filing a petition before this Court. Instead, the petitioners chose to file another application in C.M.P.No.10387 of 2023 and that application was dismissed on 26.07.2023 and thereafter, the petitioners



Crl.O.P.No.19825 of 2023

WEB COPY

have chosen to challenge the earlier order passed in C.M.P.No.2099 of 2023. In the meantime, the questioning under Section 313 of Cr.P.C., has been completed and final arguments have been heard and the matter is posted for judgment.

7. The learned Counsel for the petitioners submitted that the mistake had happened due to the fault of the Counsel who represented the petitioners. It is not known as to whether it was a genuine mistake on the part of the Counsel or it was a strategy by the petitioners to drag on the proceedings. On carefully going through both the orders, it is seen that the same Counsel has filed both the applications in C.M.P.No.2099 of 2023 and C.M.P.No.10387 of 2023.

8. The case has been pending for nearly 20 years and it is stated that out of the four accused persons, two of them are already dead and only the petitioners are facing the trial. If the petitioners are denied their right to cross-examine the Investigation Officer, it will certainly prejudice the interest of the petitioners. Hence, this Court is inclined to give one



CrI.O.P.No.19825 of 2023

WEB COPY

opportunity to the petitioners to cross-examine P.W.9 in this case subject to certain conditions.

9. In view of the above, this Criminal Original Petition is disposed off in the following terms:-

(a) The order passed in C.M.P.No.2099 of 2023, dated 20.03.2023 by the learned Judicial Magistrate No.I, Tiruppur is hereby set aside;

(b) The Court below shall fix a date for the appearance of P.W.9 and on the date of his appearance, the petitioners shall pay cost of Rs.10,000/- and the petitioners will cross-examine P.W.9 on the same day of his appearance;

(c) The Court below shall thereafter complete the questioning under Section 313 of Cr.P.C., and hear whatever arguments are placed before the Court on either side and reserve it for judgment;

(d) If the petitioners fail to cross-examine P.W.9 on the date of his appearance, they shall lose the right to recall the witness and the Court below shall proceed further to pronounce the final judgment. In any case, the proceedings shall be completed with a period of four weeks from the date of receipt of a copy of this order.



Crl.O.P.No.19825 of 2023

WEB COPY

30.08.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

Note : Issue order copy on 31.08.2023.



WEB COPY



Crl.O.P.No.19825 of 2023

N.ANAND VENKATESH, J.

grs

To

1. The Judicial Magistrate No.I,
Tiruppur.
2. The Inspector of Police,
Central Crime Branch,
Tiruppur City.
3. The Public Prosecutor,
High Court of Madras.

Crl.O.P.No.19825 of 2023
and Crl.M.P.No.13414 of 2023

30.08.2023