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Dharmaraj @ Dharmar and Others Vs. State through The Inspector of Police, Madurai.

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Court : Chennai Madurai

Decided On : Apr-29-2016

Judge : P.N. Prakash

Appeal No. : Crl.O.P. (MD) No. 7496 of 2016

Appellant : Dharmaraj @ Dharmar and Others

Respondent : State through The Inspector of Police, Madurai.

Judgement :

(Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order passed in Cr.M.P.No. 425 of 2016 in S.C.No. 177 of 2015 dated 21.04.2016 by the learned Chief Judicial Magistrate, Madurai.)

1. This petition has been filedto set aside the order passed in Cr.M.P.No. 425 of 2016 in S.C.No. 177 of 2015 dated 21.04.2016 by the learned Chief Judicial Magistrate, Madurai.

2. It is seen that these petitioners are facing trial for offences under Sections 448, 294(b) and 506(ii) IPC and Section 3(i) of TNPPDL Act before the learned Chief Judicial Magistrate, Madurai. While so, the prosecution examined P.Ws.1 to 9 and P.W.13 on various dates and the accused did not cross examine the witnesses on the said dates. Thereafter, the accused filed a petition in Cr.M.P.No. 425 of 2016

in S.C.No. 177 of 2015 under Section 311 Cr.P.C. to recall the witnesses. The Trial Judge, by order dated 07.04.2016 allowed the said petition on condition that the petitioners should pay costs of Rs.2,000/- to each witness and that they should deposit Rs.20,000/- (Rs.2,000/- x 10). Since the petitioners / accused were not able to deposit the amount, Cr.M.P.No. 425 of 2016 was dismissed on 21.04.2016, challenging which the petitioners/accused are before this Court.

3. Learned counsel for the petitioners / accused submitted that they are poor coolie workers and that they have no means to make the payment.

4. The Supreme Court in the case of In Vinod Kumar vs. State of Punjab reported in 2015 (1) Scale 542 has held that witnesses should be cross examined on the date of their examination in chief and there should not be any adjournment. Under Section 309 Cr.P.C., the Court have the power to award costs against the accused and therefore, the order passed by the Trial Judge does not suffer from any illegality. Further, taking into consideration the economic status of the accused, it will serve the interest of justice, if the cost is reduced from Rs.2,000/- per witness to Rs.500/- per witness.

5. Accordingly, this Court directs the petitioners to deposit a sum of Rs.5,000/- (Rs.500 x 10) within two weeks from the date of receipt of a copy of this order before the learned Chief Judicial Magistrate, Madurai in S.C.No.177 of 2015 and on such deposit, learned Chief Judicial Magistrate, Madurai is directed to recall P.Ws.1 to 9 and P.W.13 on the dates convenience to the Court for the petitioners/accused to cross examine them. As and when the witnesses appear, the petitioners/accused shall cross examine them, failing which, their right to cross examine them will stand forfeited. If the petitioners adopt any dilatory tactics, it is open to the Trial Court to remand them to custody under Section 309 Cr.P.C., as held by the Supreme Court in the case of State of U.P. vs. Shambhu Nath Singh, reported in 2001 (4) SCC 667.

With the above terms, this Criminal Original Petition is ordered. Consequently, connected miscellaneous petition is closed.

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