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Court : Chennai Madurai

Decided On : Mar-11-2016

Judge : P.N. Prakash

Appeal No. : Crl.O.P.(MD) No. 4136 of 2016

Appellant : Prabhakaran and Others

Respondent : State rep. by the Inspector of Police, Thanjavur

Judgement :

(Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for records pertaining to Cr.M.P.No.14 of 2016 in S.C.No.242 of 2015 dated 10.02.2016 on the file of the II Additional Sub-Court, Thanjavur and set aside the same.)

1. This petition has been filed to call for records pertaining to Cr.M.P.No.14 of 2016 in S.C.No.242 of 2015 dated 10.02.2016 on the file of the Additional Assistant Sessions Judge, Thanjavur and set aside the same.

2. The petitioners are facing trial in S.C.No.242 of 2015 for offences under Sections 294(b) and 506(i) IPC and Section 3(1) of TNPPDL Act before the Additional Assistant Sessions Judge, Thanjavur. The prosecution examined P.Ws.1 and 2 in chief on 22.12.2015 and the petitioners did not cross examine them. Thereafter, the petitioners filed a petition in Cr.M.P.No.14 of 2016 in S.C.No.242 of 2015 under Section 311 Cr.P.C. for recalling P.Ws.1 and 2 for the

purpose of cross examination, which the Trial Court dismissed on 10.02.2016, aggrieved by which, the petitioners are before this Court.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the State.

4. The Trial Court has dismissed the petition by relying upon the judgment of the Supreme Court in the case of Vinod Kumar vs. State of Punjab, reported in 2015 (3) SC 220, wherein the Supreme Court has stated that prosecution witnesses should be cross examined on the same day and indulgence should not be shown to the accused by adjourning the cross examination, because, that will give room for intimidation of witnesses. Therefore, there is no infirmity in the order passed by the learned Additional Assistant Sessions Judge, Thanjavur.

5. However, learned counsel for the petitioners submitted that if P.Ws.1 and 2 are not cross examined, undue prejudice would be caused to them and that on a date fixed by the Trial Court, the petitioners will cross examine the witnesses without fail.

6. Taking into consideration the nature of allegations against these petitioners and the fact that the petitioners have filed the petition under Section 311 Cr.P.C. within 21 days of examination of P.Ws.1 and 2, this Court is of the view that it will serve the interest of justice, if one more opportunity is given to the petitioners to cross examine P.Ws.1 and 2.

7. In the result, the order dated 10.02.2016 in Cr.M.P.No.14 of 2016 in S.C.No.242 of 2015 passed by the Additional Assistant Sessions Judge, Thanjavur is set aside. On a date fixed by the Trial Court, preferably within two weeks from the date of receipt of a copy of this order, P.Ws.1 and 2 shall be recalled for the purpose of cross examination. On the appearance of P.Ws.1 and 2, the petitioners shall pay a sum of Rs.1,000/- as cost to each of the witnesses and thereafter, they can be permitted to cross examine the witnesses.

8. The learned Trial Judge shall bear in mind that Section 154 of the Indian Evidence Act has been amended and even if the witnesses turn hostile during

cross examination, the Trial Judge can appreciate their evidence in the chief examination and pass a judgment in accordance with law. Even in *Vinod Kumar vs. State of Punjab* (supra) and *Nayan Kumar Shivappa Waghmare vs. State of Maharashtra*, reported in 2015 (2) Scale 330, the Supreme Court relied upon the chief examination of the witnesses, who turned turtle, when they were cross examined after several days, for convicting the accused.

9. This Criminal Original Petition is ordered on the above terms. Consequently, connected miscellaneous petitions is closed.

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