

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.16857 of 2015

And

M.P.No. 1 of 2015

N.Saravanakumar Petitioner/Petitioner/Accused

Vs

State by

The Inspector of Police

Mandharakuppam Police Station

Cuddalore District.

(Cr.No. 215/2012)

... Respondent/Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and set aside the order dated 19.06.2015 made in C.M.P.No. 124 of 2015 in S.C.No. 33 of 2013 on the file of Assistant Sessions Judge, Neyveli.

For Petitioner :Mr.D.Ashok Kumar

For Respondent :Mr.C.Emalias
Additional Public Prosecutor

ORDER

Seeking a direction to set aside the order dated 19.06.2015 made in C.M.P.No. 124 of 2015 in S.C.No. 33 of 2013 on the file of Assistant Sessions Judge, Neyveli, the petitioner has come up with this petition.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent police.

3. It is seen that the petitioner is facing trial for an offence under Section 307 IPC. The prosecution examined 12 witnesses and the accused did not cross examined any of the witnesses though opportunity was given to him. The accused filed an application under Section 311 of Cr.P.C., for recalling PW-1 to PW-8 and that was allowed by the Court on 08.10.2013, in spite of which, the accused did not cross examine any of the witnesses. Therefore, the trial Court proceeded to examine further witnesses and the accused was questioned under Section 313 of Cr.P.C on 05.06.2015. After that, the accused has filed the Petition in C.M.No. 124 of 2015 to recall the witnesses which were rightly

dismissed by the trial Court on the ground that the accused had not availed of the opportunity, that was given twice to him earlier.

4. The learned counsel appearing for the petitioner submits that the accused had changed his lawyer and therefore, an opportunity could be given to him for recalling the witnesses.

5. Section 309 of Cr.P.C., clearly states that the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment.

6. When the law is as above, change of pleader can be no reason for adjourning a case. The learned counsel further submits that since he is facing grave charges, one more opportunity is given to him, he would avail of it. He further submits that the petitioner is ready and willing to pay the cost.

7. Recording the submissions, the order of the trial Court, dated 19.06.2015 in C.M.P.No. 124 of 2015 in S.C.No. 33 of 2013 is set aside and the witnesses shall be recalled on dates fixed by the trial Court. The petitioner shall pay Rs.500/- to each of the witnesses as cost before they get into witness box for giving evidence.

8. Recalling and the cross examination should be completed within a period of two weeks from the date of receipt of a copy of this order. If the petitioner does not co-operate, his bail shall be cancelled and he will be remanded to custody under Section 309 of Cr.P.C as per the Judgment of the Hon'ble Supreme Court in State of U.P Vs. Shambunath Singh reported in JT 2001 (4) SC 319; and P.K.Shaji Vs. State of Kerala reported in (2005) AIR SCW 5560 and the trial can be conducted while he is in custody.

9. This Criminal Original Petition is closed with the above direction. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Assistant Sessions Judge, Neyveli.

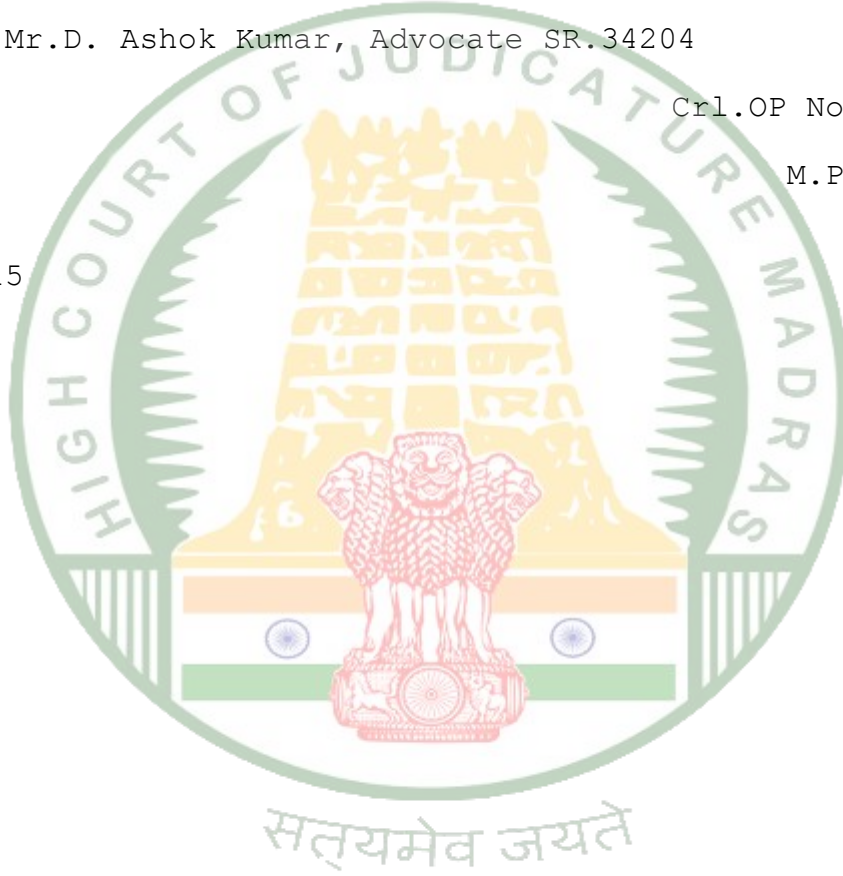
2. The The Inspector of Police
Mandharakuppam Police Station
Cuddalore District.

3. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.D. Ashok Kumar, Advocate SR.34204

Crl.OP No.16857 of 2015
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SCD(CO)
Eu 31.07.15



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