

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.08.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

CrI.OP No.19967 of 2011
and M.P.No.1 of 2011

State represented by
Inspector of Police,
CBI/EOW/Chennai.

... Petitioner

Vs

1.R.Kanagaraj
2.K.N.Duraisamy
3.D.Kanchana
4.P.Rajendran

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C.,
to set aside the docket order dated 02.03.2011 in C.C.No.5 of 2009
passed by the learned Chief Judicial Magistrate, Coimbatore.

For Petitioner : Mr.K.Srinivasan,
Special Public Prosecutor (CBI)
For Respondents : No Appearance

ORDER

This Criminal Original Petition has been directed praying to set
aside the docket order dated 02.03.2011 passed in C.C.No.5 of 2009 by
the learned Chief Judicial Magistrate, Coimbatore.

2. It is stated in the petition that the petitioner is the
complainant in C.C.No.5 of 2009. On the side of prosecution, one
L.Periyasamy has been examined as P.W.16. During the course of chief
examination, he specifically stated that one Duraisamy, has driven
the Bullet Motorcycle, which caused the accident. But, during the
course of cross examination, he simply stated that he does not know
about the person, who has driven the said Motorcycle. Under the said
circumstances, the learned Special Public Prosecutor has sought
proper permission from the Court, to cross examine P.W.16 with regard
to the said aspect. But the same has been rejected by way of passing
the impugned docket order dated 02.03.2011 for setting aside the
same, the present petition has been filed.

3. Even though the respondents have been served with summonses, appearance has not been made and therefore, the present Criminal Original Petition is disposed of on merits on the basis of the contention put forth on the side of the petitioner.

4. The learned Special Public Prosecutor appearing for the petitioner has contended that in C.C.No.5 of 2009 on the side of the prosecution, one Periyasamy has been examined as P.W.16 for the purpose of proving that the second accused has driven the vehicle which caused the accident and to that effect, he has given evidence in his chief examination. But for the reasons best known to him, he simply stated in his cross examination that he has not known about the person, who has driven that vehicle. Under the said circumstances, proper permission has been sought for so as to cross examine him with regard to the said aspect. But the Court below has rejected the permission sought for on the side of the prosecution. Under the said circumstances, this Criminal Original Petition has been filed for getting the relief sought for herein.

5. It is seen from the records that on 02.03.2011, the said Periyasamy has been examined as P.W.16. During the course of chief examination, he has simply stated to the effect that the second accused by name Duraisamy has driven the vehicle which caused the accident. But as rightly pointed out on the side of the petitioner, during the course of cross examination, he has given an evasive reply to the effect that he has not known about the person, who has driven the vehicle which caused the accident.

6. Further it is seen from the records that an attempt has been made on the side of the prosecution for getting proper permission from the Court to cross examine P.W.16 with regard to the said aspect. But the Court below has simply rejected the permission sought for on the side of the prosecution.

7. It is settled principle of law that if a witness of a party has failed to support the case of the said party, with the permission of the Court, he can be treated as a hostile witness for making cross examination.

8. In the instant case, as noted down earlier in the chief examination, the witness has clearly stated that the second accused has driven the vehicle which caused the accident, but in the cross examination, he simply stated that he has not known about the person, who has driven the same. Under the said circumstances, as per Section 154 of the Indian Evidence Act, 1872, the prosecution is having unperturbed right of treating its own witness as hostile. But, the Court below, without considering the correct legal position and also power of the prosecution, has simply rejected the permission sought for on the side of the prosecution. Under the said circumstances, the docket order dated 02.03.2011 passed by the Court below is liable to be set aside.

9. In fine, this Criminal Original Petition is allowed and the docket order dated 02.03.2011 passed in C.C.No.5 of 2009 in the deposition of P.W.16 is set aside. The petitioner is at liberty to file relevant petition so as to recall P.W.16 and permission is granted to cross examine him with regard to the aspect mentioned supra. Consequently, connected miscellaneous petition is closed.

vsm

s/d-
Assistant Registrar(J)

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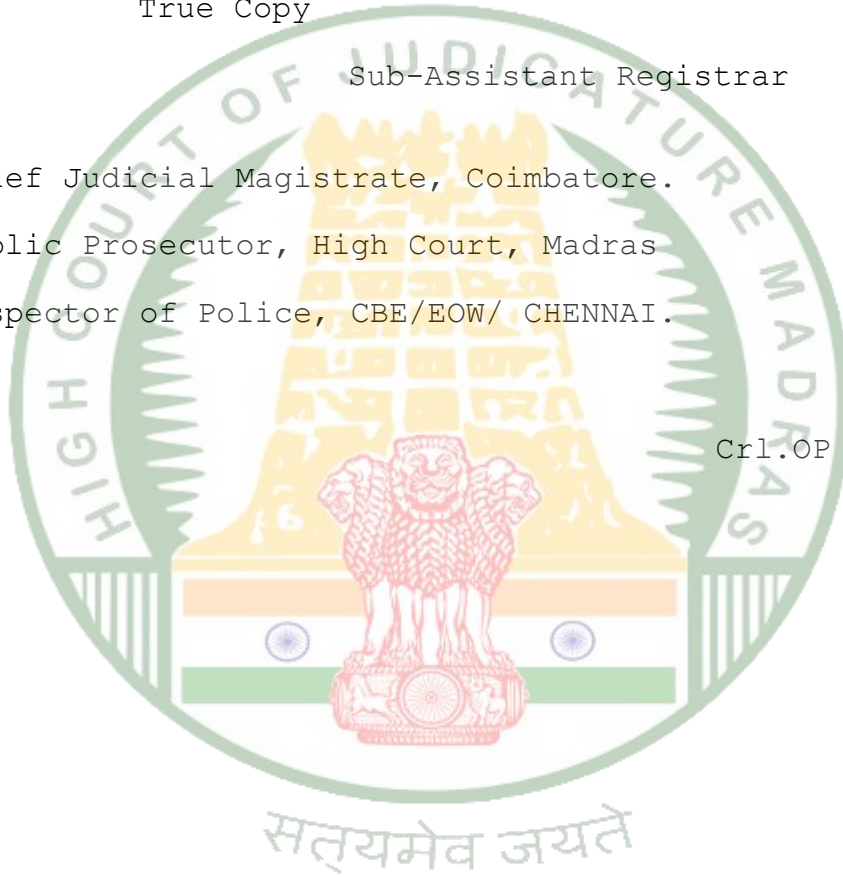
Sub-Assistant Registrar

To

1. The Chief Judicial Magistrate, Coimbatore.
2. The Public Prosecutor, High Court, Madras
3. The Inspector of Police, CBE/EOW/ CHENNAI.

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