

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.04.2015
DELIVERED ON : 27.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.3961 of 2015

1.Uma
2.Chandran

... Petitioners

vs.

State by Inspector of Police
K.V.Kuppam Police Station
Vellore District.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and set aside the order of the learned Principal District Judge, Vellore, Vellore District, made in CrI.M.P.No.5039 of 2014 in S.C.No.58 of 2014 dated 02.12.2014 in dismissing the petition filed by the petitioner herein under Section 311 Cr.P.C.

For Petitioners : Mr.V.Vinodh Kumar

For Respondent : Mr.C.Emalias, APP

O R D E R

This petition has been filed to call for the records and set aside the order of the learned Principal District Judge, Vellore, Vellore District, made in CrI.M.P.No.5039 of 2014 in S.C.No.58 of 2014 dated 02.12.2014 in dismissing the petition filed by the petitioner herein under Section 311 Cr.P.C.

2. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the State.

3. The petitioners are accused in S.C.No.58 of 2014 for an offence under Section 302 r/w 34 IPC. It is seen that trial commenced in this case after framing of charges and the prosecution examined P.Ws.1 to 10 and they were cross examined by the defence on 18.08.2014 and Exs.P1 to 4 were marked. The remaining witnesses, namely P.Ws.11 to 14 were examined on 19.08.2014 and Exs.P5 to P11 were marked.

4. On 19.08.2014, the petitioners counsel filed an application in CMP No.4306 of 2014 under Section 309 Cr.P.C seeking adjournment on the ground that, he is appointing a Senior Counsel. On 08.09.2014 one Mr.S.Jayakumar filed memo of appearance for the accused and thereafter, witness summons were issued to the remaining witnesses. On 16.09.2014, some witnesses were examined and the counsel for the accused stated "no cross". Thereafter, the accused filed C.M.P.No.5039 of 2014 for a prayer to recall all the witnesses for cross examination. The learned trial Judge considered the application and found that the prayer for recalling of P.Ws.1 to 10 for the purpose of cross examination is not on bona fide grounds, inasmuch as they were exhaustively cross examined by the defence and therefore, he disallowed the prayer with regard to that, but partly allowed the prayer of the accused for cross examining P.Ws.12,13,14,15, 18 and 19. Aggrieved by the order passed by the learned Principal Sessions Judge, Vellore, this petition has been filed.

5. It is trite law that an application under Section 311 Cr.P.C. can be filed at any time before the judgment is delivered, for recalling a witness or for examining a new witness, where there evidence appears to be essential to the just decision of the case. The judgment of the Supreme Court on this aspect are in legion. At the same time, in the guise of recalling witnesses who are already examined in chief and examined in cross, there is a concerted attempt to gain them over by intimidation and threat in heinous offence.

6. In Rajaram Prasad Yadav vs. State of Bihar [(2013) 3 Scale 316, the Supreme Court has given guidelines for exercise of powers under Section 311 Cr.P.C. If these witnesses had not been examined, then this Court would have surely interfered with the order of the trial Court. But, from the records it is clear that all these witnesses have been thoroughly cross examined and again they are being recalled for no good reasons. The learned trial Judge has correctly exercised his discretion by partly allowing the prayer and permitting to recall some witnesses and therefore, the order of the Court below does not suffer from any infirmity. It appears to be a dilatory tactics adopted by the accused for reasons best known to them.

In the result, this petition is devoid of merits and the same is dismissed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

gms

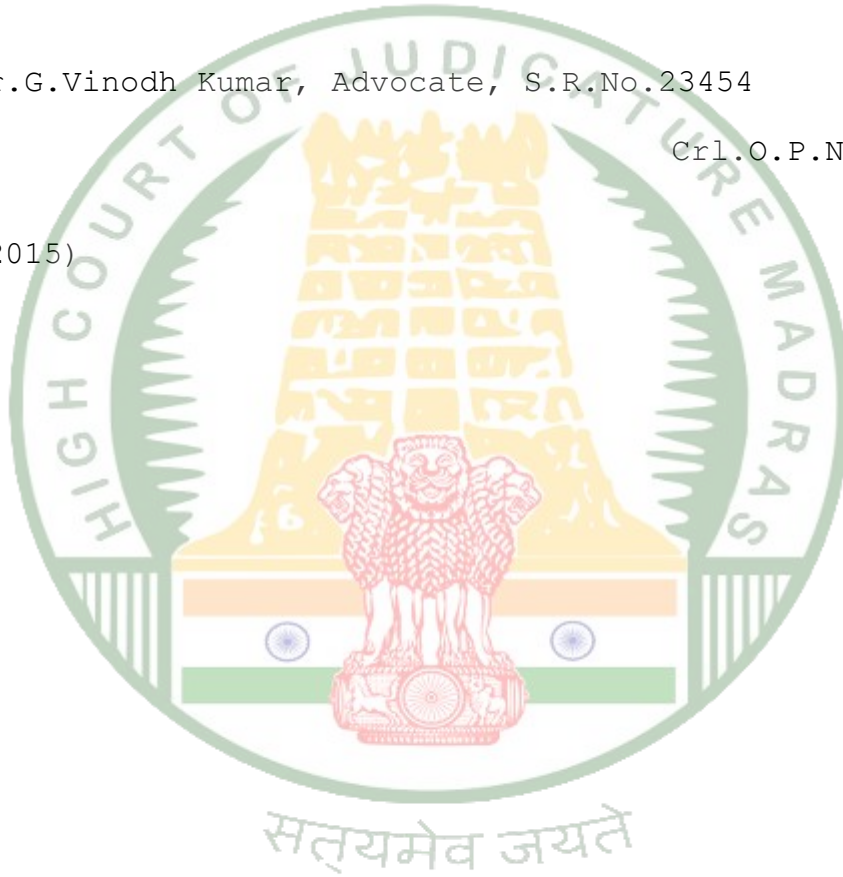
To

1. The Principal District Judge,
Vellore, Vellore District.
2. The Inspector of Police
K.V.Kuppam Police Station
Vellore District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.Vinodh Kumar, Advocate, S.R.No.23454

CrI.O.P.No.3961 of 2015

RSY (CO)
CA(19/05/2015)



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