

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.12864 of 2016

and

Crl.M.P. No.6662 of 2016

Karupannan

Petitioner

Vs.

The State represented by
the Inspector of Police
Sankari Police Station
Sankari, Salem District

Respondent

Criminal Original Petition filed under Section 482
Crl.P.C. to set aside the order dated 15.03.2016 made in
C.M.P. No.1488 of 2016 in C.C. No.64 of 2007 on the file of
the Judicial Magistrate No.1, Sankari.

For petitioner Mr. R. Marudhachalamurthy

For respondent Mr. C. Emalias
Additional Public Prosecutor

O R D E R

This Criminal Original Petition is filed to set aside the
order dated 15.03.2016 made in C.M.P. No.1488 of 2016 in C.C.
No.64 of 2007 on the file of the Judicial Magistrate No.1,
Sankari.

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

3 It is seen that the petitioner is facing prosecution
in C.C. No.64 of 2007 for offences under Sections 279, 337 (12
counts), 338 (2 counts) and 304-A (2 counts) IPC and during
the course of the trial, the prosecution examined 20 witnesses
and it is stated that the accused have cross examined 19
witnesses. One Annamalai, Investigating Officer was examined-
in-chief as P.W.20 on 21.03.2012 and on that day, the accused
did not cross-examine him. Thereafter, the accused filed the
present petition in C.M.P. No.1488 of 2016 in C.C. No.64 of
2007 under Section 311 Cr.P.C. to recall Annamalai, which was
dismissed by the Trial Court on 15.03.2016, challenging which
the accused is before this Court.

4 It is seen that this case is of the year 2007 in

which two people have lost their lives and Annamalai was examined-in-chief on 21.03.2012 and for reasons best known to the petitioner, he did not cross examine Annamalai on that day.

5 This Court deprecates the practice of accused not cross examining the witnesses on the day they are examined-in-chief and filing recall application under Section 311 Cr.P.C., after several years. In *Vinoth Kumar vs. State of Punjab*, [2015 (1) MLJ (Cr1.) 288], the Supreme Court has held in unequivocal terms that a witness who is examined-in-chief on a particular day, should be cross examined on the same day. Pursuant to the said judgment, Madras High Court has issued a circular dated 18.12.2015 to all the Trial Courts to comply with the direction issued by the Supreme Court in *Vinoth Kumar's* case.

6 Under such circumstances, this Court does not find serious infirmity in the impugned order passed by the Judicial Magistrate Court, Sankari. However, taking into consideration the fact that the petitioner has cross examined 19 witnesses and P.W.20 has not been cross examined, this Court wanted to ascertain whether P.W.20, viz., Annamalai, is available for cross examination and the learned Additional Public Prosecutor submitted that Annamalai is now working as Deputy Superintendent of Police in Uthamapalayam, Theni District.

7 Only under such circumstances, this Court is of the considered view that it will be in the fitness of things, if one opportunity is given to the petitioner to cross examine Annamalai, P.W.20 on a date fixed by the Trial Court.

8 Accordingly, the Trial Court is directed to recall Annamalai, P.W.20, within a period of one month from the date of receipt of a copy of this order and on that day, when Annamalai, P.W.20 appears for giving evidence, the accused has to cross examine him and boycott of Courts shall not be a reason for not cross examining him as laid down by the Supreme Court in *Harish Uppal vs. Union of India* and another [(2003) 2 SCC 45]. If the petitioner fails to cross examine Annamalai on the day he appears, he will forfeit his right to cross examine him. If the petitioner adopts any dilatory tactics, it is open to the Trial Court to remand him to custody under Section 309 Cr.P.C., in the light of the law laid down by the Supreme Court in *State of Uttar Pradesh vs. Shambhu Nath Singh* [JT 2001 (4) SC 319]. The Trial Court is directed to comply with the orders of this Court and send a report to this Court on or before 27.07.2016 for compliance.

This Criminal Original Petition stands disposed of with the above directions and observations. Connected Crl.M.P. is closed.

cad

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1 The Inspector of Police
Sankari Police Station
Sankari, Salem District.

2 The Judicial Magistrate No.1
Sankari, Salem.

(Send a Report for Compliance on or before 27/07/16)

3 The Public Prosecutor
High Court of Madras
Chennai 600 104.

4. The Section Officer, Crl. Section,
High Court, Madras.

(To Watch and Post this Case for Compliance on 27/07/16)

+ 1 cc to Mr.R.Marudhachalamurthy, Advocate Sr 10219

KR/6/7/16

Crl.O.P.No.12864 of 2016

सत्यमेव जयते

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