

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.19316 of 2016

Anand Vinod Singh

... Petitioner

Vs

The State rep.by
The sub-Inspector of Police,
Parangipettai, Cuddalore District. ... Respondent

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set-aside the order dated 05.03.2016 in Crl.M.P.No.664 of 2016 in C.C.No.81 of 2014 on the file of the District Munsif cum Judicial Magistrate Court at Parangipettai, Cuddalore District and allow the petitioner/Accused to recall the witnesses PW-1 to 3 and PW-8.

For Petitioner :Mr.Thomas T Jacob

For Respondent :Mr.C.Emalias
Additional Public Prosecutor

ORDER

This criminal Original petition has been filed to set-aside the order dated 05.03.2016 in Crl.M.P.No.664 of 2016 in C.C.No.81 of 2014 on the file of the District Munsif cum Judicial Magistrate Court at Parangipettai, Cuddalore District and allow the petitioner/Accused to recall the witnesses PW-1 to 3 and PW-8.

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

3. It is seen that the petitioner is facing prosecution for offences under Sections 147, 148, 294(b), 352, 427, 506(ii) and r/w 4 of the Tamil Nadu Women Harassment Act before the District Munsif Cum Judicial Magistrate, Parangipettai, in C.C.No.81 of 2014.

4. While so, PW1 and PW2, were examined in Chief on 27.03.2015 and at that time, the petitioner did not cross-examine them. Thereafter, PW3 was examined in Chief on 10.04.2015, the petitioner did not cross-examine him. On 22.01.2016, PW8 was examined in Chief and he was not cross-examined. Thereafter, the petitioner was questioned under Section 313 Cr.P.C. and he filed a petition in CrI.MP.No.664 of 2016 in C.C.No.81 of 2014 under Section 311 Cr.P.C. to re-call PWs 1, 2, 3 & 8, which was dismissed by the trial Court on 15.03.2016, challenging which, the petitioner is before this Court.

5. Mr.Thomas T Jacob, learned counsel appearing for the petitioner submitted that the petitioner is a Government Servant and that, one opportunity should be given to cross-examine the witnesses.

6. On a reading of the petition filed by the petitioner before the trial Court under Section 311 Cr.P.C, the petitioner had not even stated any reasons for recalling the witnesses. Recalling the witnesses is not a Statutory right and the parameters for re-calling of powers under Section 311 Cr.P.C has been laid down by the Hon'ble Supreme Court in A.G. Vs. Shiv kumar Yadav and another reported in 2015 (9) Scale 649. The causal manner in which, the petition under Section 311 Cr.P.C has been filed, led to the trial Court to dismiss the same.

7. Relying upon the judgment of the Hon'ble Supreme Court in Vinoth Kumar vs. State of Punjab [2015(1) MLJ (crl) 288]. this Court does not find any good reason to re-call the aforesaid witnesses and there is no serious infirmity in the order passed by the trial Court. Hence, this criminal original petition is dismissed.

8. However, this Court is of the view that it will serve the interest of justice, if the petitioner is permitted to cross-examine PW2 and PW8. Accordingly, on certain terms, the trial Court is directed to re-call PW2 and PW8, if they are otherwise available in the village, within a period of four weeks from the date of receipt of a copy of this order. On a date fixed by the trial Court on the appearance of PW2 and PW8, the petitioner shall pay a cost of Rs.1000/-each and cross-examine them on the

day itself. Boycott of courts shall not be a reason to desist from cross-examining the witnesses. If the petitioner fails to cross-examine, on the date of appearance of the witnesses, the right to cross-examine the witnesses shall stand forfeited.

Sd/-
Assistant Registrar(J)

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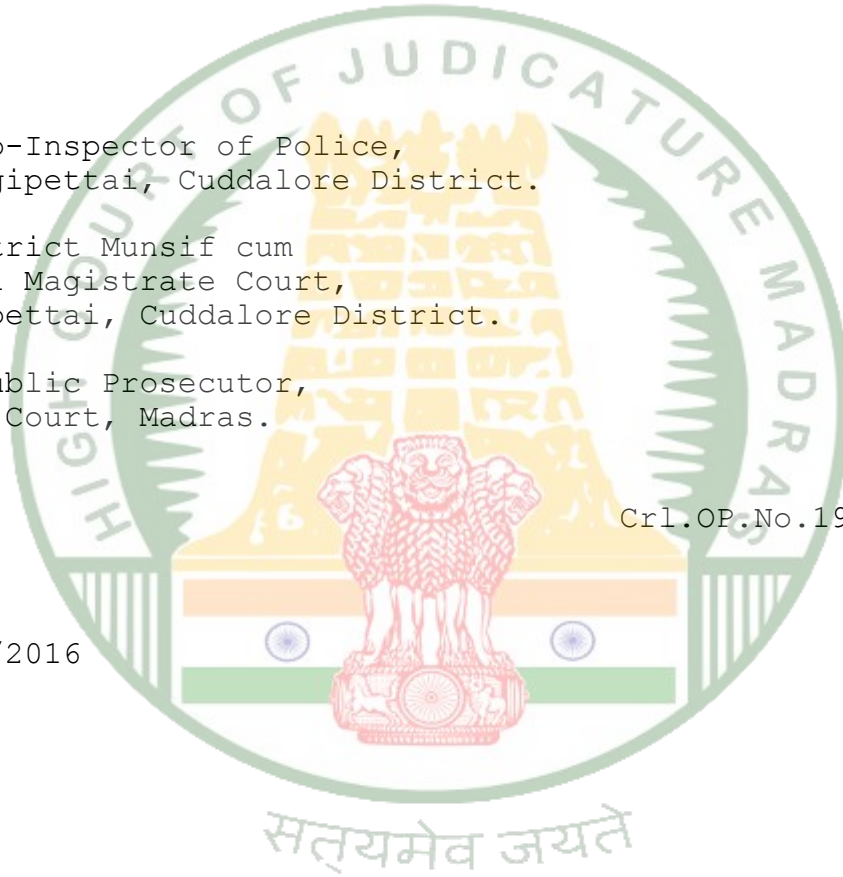
Sub Assistant Registrar

To

1. The sub-Inspector of Police,
Parangipettai, Cuddalore District.
2. The District Munsif cum
Judicial Magistrate Court,
Parangipettai, Cuddalore District.
3. The Public Prosecutor,
High Court, Madras.

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