

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.21142 of 2016

and M.P.No.9792 of 2016

1.Babu Singh (died)

2.Komal Singh S/O Babu Singh

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Petitioners

Vs

State Rep.by

The Inspector of Police,
K-4, Anna Nagar Police Station,
Chennai 600 040.

Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order passed by the Learned V Metropolitan Magistrate, Egmore, at Chennai in Crl.M.P.No.2227 of 2016 in C.C.No:4480 of 2012 dated 09.09.2016 and consequent direct the V Metropolitan Magistrate, Egmore, Chennai to recall the PW1 to PW6 for cross examination in the above mentioned C.C.No.

For petitioners : Mr.T.Suresh

For Respondent : Mr.C.Emalias
Addl.Public Prosecutor

O R D E R

This petition has been filed to set aside the order passed by the V Metropolitan Magistrate, Egmore, at Chennai in Crl.M.P.No.2227 of 2016 in C.C.No:4480 of 2012 dated 09.09.2016 and consequently direct the V Metropolitan Magistrate, Egmore, Chennai to recall the PW1 to PW6 for cross examination in C.C.No.4480 of 2012.

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

3. It is seen that, on the complaint given by one Javidkhan (PW1), the respondent police registered a case in Crime No:1769 of 2011 and after completing the investigation, filed a final report in C.C.No:4480 of 2012 before the V Metropolitan Magistrate Court, Egmore, Chennai against Babu Singh (A1) and his wife Komal Singh (A2). It is the case for the prosecution that, Babu Singh had taken Rs.2 lakhs from the de facto complainant and had not returned money and cheated him. Babu Singh (A1) died and, therefore the charge against him abated. Komal Singh (A2) alone is facing trial. While so, the prosecution has examined 6 witnesses whom Komal Singh has not cross examined for reasons best known to her. Thereafter Komal Singh filed a

petition in M.P.No:2227 of 2016 in C.C.No:4480 of 2012 for recalling PW1 to PW6 which was dismissed by the trial Court by order dated 09.09.2016, challenging which, Komal Singh is before this Court.

4. Heard Mr.T.Suresh, learned counsel appearing for Komal Singh and Mr.C.Emalias, learned Additional Public Prosecutor appearing for the State and perused the records.

5. In the petition filed u/s.311 of Cr.P.C. Komal Singh has not even given any cogent reason for recalling the prosecution witnesses. In Vinoth Kumar Vs State of Punjab 2015 (1) MLJ (Cr1) 288 the Supreme Court has very clearly stated that, prosecution witnesses should be cross examined on the day they are examined-in-chief. In A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], the Supreme Court has laid down the parameters for exercise of powers u/s.311 of Cr.P.C. The powers u/s.311 of Cr.P.C. can be exercised only if it is demonstrated that, the recalling of the witnesses is essential to the just decision of the case. In the petition filed by Komal Singh before the trial Court, she has not given any reason for recalling the witnesses and has merely stated that, they have to be examined as if it is a matter of right. That apart, PW1 was examined on 09.10.2013 and PW2 was examined on 23.10.2015. Under such circumstances, it is not desirable to recall PW1 and PW2 for the purpose of cross examination by Komal Singh.

6. However, it is seen that PW3 to PW5 were examined-in-chief only on 13.07.2016 and PW6 was examined on 03.08.2016. Hence, this Court is of the view that undue prejudice would be caused to Komal Singh, if she is not permitted to cross examine these witnesses. Accordingly, the trial Court is directed to recall PW3, PW4 and PW6 who are material witnesses, on the date convenient to the Court within one month from the date of receipt of a copy of this order. On appearance of the witnesses, Komal Singh shall pay Rs.1,000/- (One Thousand Only) as costs to each of the witnesses before they enter into the witness box for cross examination.

7. With the above directions, this petition is partly allowed. Consequently miscellaneous petitions is also closed.

dpq

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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The V, Metropolitan Magistrate,
Egmore, Chennai.

2. -do- Thro' Cheif Metropolitan Magistrate,
Chennai.

3. The Inspector of Police,
K-4, Anna Nagar Police Station,
Chennai 600 040.

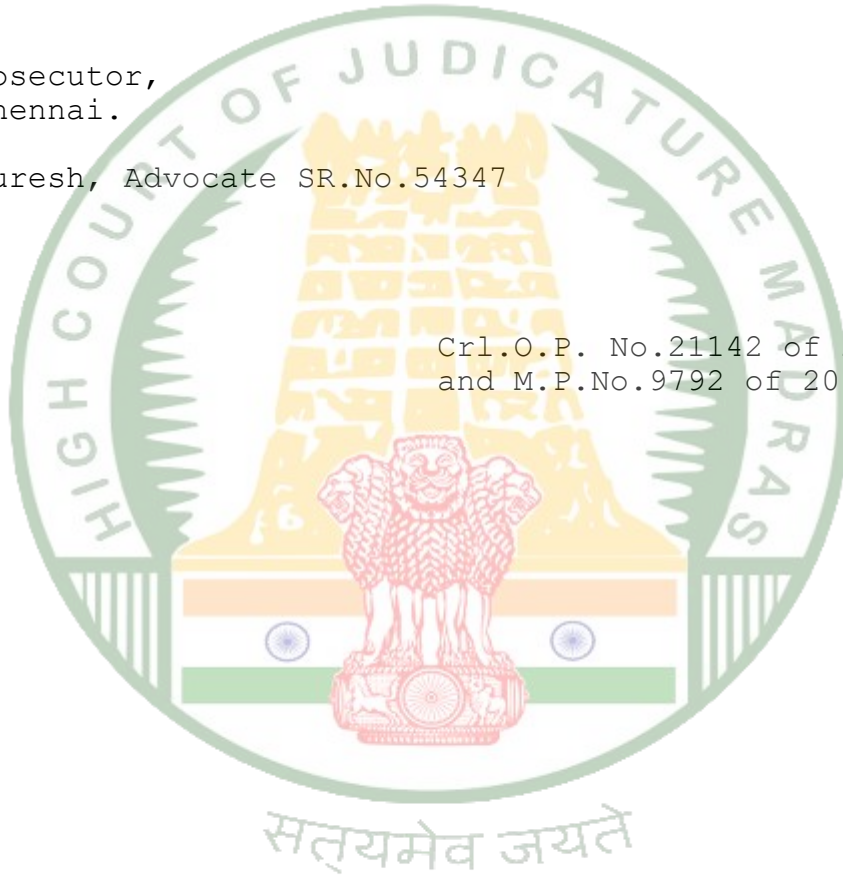
4. The Public Prosecutor,
High Court, Chennai.

+2 CC to Mr. T.Suresh, Advocate SR.No.54347

CO-KSJ

ths : 18.10.2016

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