

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2016

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.22420 of 2016 and
Crl.M.P.No.10423 of 2016

Venkatesan .. Petitioner

Vs.

The State rep by the Inspector of Police
Railway Protection Force, Katpadi
Vellore District. .. Respondent

Criminal Original Petition filed under Section 482,
Cr.P.C. to set aside the order passed by the Judicial
Magistrate No.I, Vellore, Vellore District dated 20.09.2016 in
Crl.M.P.No.1751 of 2016 in C.C.No.86/2008.

For petitioner Mr.E.Kannadasan

For respondent Mr.M.Mohamed Riyaz
Govt. Advocate (crl.side)

ORDER

This petition has been filed to set aside the order
passed by the Judicial Magistrate No.I, Vellore, Vellore
District dated 20.09.2016 in Crl.M.P.No.1751 of 2016 in
C.C.No.86/2008.

2. Heard the learned counsel for the petitioner and
the learned Government Advocate (crl.side) appearing for the
State.

3. It is seen that this petitioner is facing
prosecution in C.C.No.86 of 2008 before the Judicial
Magistrate-1, Vellore for offence u/s 3(a) of the Railway
Property (Unlawful Possession) Act. The prosecution had
examined P.W.3 as early as 13.07.2011. Thereafter, the
prosecution completed the evidence. The accused was
questioned u/s 313 Cr.P.C. and at the stage of defence, the
accused has filed the present petition in Crl.M.P.No.1751 of
2016 u/s 311 Cr.P.C. to recall P.W.3, which was dismissed by
the Court below, challenging which the accused is before this

4. Learned counsel for the petitioner/accused submitted that one opportunity should be given to the petitioner to recall P.W.3, inasmuch as after the counsel was changed, it was found that several questions were not put to P.W.3.

5. In the considered opinion of this Court, the Supreme Court has given the parameters for recalling a witness u/s 311 Cr.P.C. in A.G. vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], which has been subsequently followed by the Supreme Court in State of Haryana v. Ram Mehar [(2016) 8 Scale 192], stating that change of counsel cannot be a ground to recall the prosecution witnesses who have been examined years back. That apart, even in the petition filed u/s 311 Cr.P.C., the petitioner has not made out sufficient grounds for exercise of power by this Court u/s 482 Cr.P.C.

In the result, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

gms

To

1.The Inspector of Police
Railway Protection Force, Katpadi
Vellore District.

2.The Judicial Magistrate No.I,
Vellore, Vellore District

3.The Public Prosecutor,
High Court, Madras.

+1 C.C. To M/s. E. Kannadasan, Advocate, SR.NO.57142

Cr1.O.P. No.22420 of 2016

RK(CO)
SSM/18/10/2016