

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2016

CORAM:

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

Crl.O.P. No.23261 of 2016 & Crl.M.P. No.10886 of 2016

M. Stalin

Petitioner

vs.

State represented by
the Inspector of Police
N-2 Police Station
Chennai

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to set aside the order in C.C. No.3128 of 2013 dated 21.01.2016 in XVI Metropolitan Magistrate, George Town, Chennai.

For petitioner : Mr. P. Tamilavel

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

ORDER

This Criminal Original Petition has been filed seeking to set aside the order dated 21.01.2016 passed in C.C. No.3128 of 2013 before the XVI Metropolitan Magistrate, George Town, Chennai.

2 The petitioner and two others are facing prosecution in C.C. No.3128 of 2013 before the XVI Metropolitan Magistrate Court, George Town, Chennai under Sections 341, 323 and 506(II) IPC. It is seen that the prosecution examined witnesses as early as 05.03.2015 and on that day, the petitioner did not cross-examine the witnesses, viz., P.Ws.4 and 5. Thereafter, the petitioner and two others filed Cr.M.P. No.3299 of 2015 under Section 311, Cr.P.C., which was allowed by the Trial Court and the witnesses came on 21.12.2015. But, once again, the accused did not cross-examine them. Again, the petitioner, with two others, filed the present petition for recalling witnesses, which has been dismissed by the Trial Court on 21.01.2016, challenging which, the petitioner alone is before this Court.

3 The learned counsel for the petitioner submitted that if one opportunity is given to the petitioner to cross-examine the witnesses, he is even ready to pay costs. To buttress this

contention, he placed reliance upon an unreported decision dated 20.04.2016 of the Madurai Bench of this Court in Balachandar vs. The State, through the Sub Inspector of Police, AWPS, Ambasamudram, Tirunelveli District (Crl. O.P. (MD) No.601 of 2016).

4 It is to be remembered that a witness in a criminal case is performing a public duty by coming and giving evidence in a Court of law. In this case, P.Ws.4 and 5 were examined-in-chief on 05.03.2015 and on that day, for the reasons best known to the petitioner, they were not cross-examined. In Vinoth Kumar vs. State of Punjab [2015 (1) MLJ Crl.288], the Supreme Court has held that the witnesses should be cross-examined on the date they are examined-in-chief in all criminal cases and a further direction has been issued to the Registrars General of High Courts to issue circulars to the Trial Courts to follow the said mandate.

5 Be that as it may, the accused filed a petition under Section 311, Cr.P.C., viz., Cr.M.P. No.3299 of 2015 to recall P.Ws. 4 and 5, which was allowed by the Trial Court and the witnesses came on 21.12.2015. But, on that day, they were not cross-examined.

6 The learned counsel for the petitioner submitted that the counsel for the accused was indisposed and therefore, the prosecution witnesses could not be cross-examined on that day.

7 In this context, it is worth referring to Proviso to Section 309, Cr.P.C., which reads as under:
"Provided also that--

a no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

b the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

c where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be."

8 Following the above provision, the Supreme Court has recently given a detailed judgment in Priyanka Srivastava and another vs. State of U.P. and others [(2015) 6 SCC 287] laying down the law under Section 311, Cr.P.C.

9 In view of the above said position of law, this Court does not find any infirmity, much less any serious infirmity, in the order passed by the Court below.

In the result, this Criminal Original Petition is dismissed. Connected Crl.M.P. is closed.

Cad

Sd/-

Assistant Registrar (CS II)

/TRUE COPY/

Sub-Assistant Registrar

To

- 1 The Inspector of Police
N-2 Police Station
Chennai
- 2 The XVI Metropolitan Magistrate
George Town
Chennai
- 3 -Do-Tho-The Chief Metropolitan Magistrate,
Egmore, Chennai
- 4 The Public Prosecutor
Madras High Court
Chennai 600 104

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Crl.O.P. No.23261 of 2016

NOCD

MK:12/11/2016

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