

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2016

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.O.P.No.23725 of 2016

Prithiviraj

...Petitioner

Vs.

The SHO,

K-4, Anna Nagar Police Station.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C to set aside the order passed by learned V Metropolitan Magistrate Egmore in CrI.MP.No.2225/2016 dated 09.09.2016 made in C.C.No.83/2013 and direct him to recall the prosecution witnesses 1 to 6.

For Petitioner : Mr.S.N.Arunkumar  
for M/s.A.P.Sathyamurthy

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

O R D E R

This criminal original petition has been filed to set aside the order dated 09.09.2016 passed by Metropolitan Magistrate No.V, Egmore in CrI.MP.No.2225/2016 made in C.C.No.83/2013 and to recall the prosecution witnesses 1 to 6.

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

3. The petitioner is facing prosecution in C.C.No.83 of 2013 for offences under Section 294(b), 323, 332, and 341 of IPC. On the complaint lodged by Vetriselvan (PW1) in respect of an incident that took place on 10.10.2012, the prosecution examined six witnesses on various dates and the accused for the reasons best known to him did not cross examine any of the witnesses. Thereafter, the accused filed a petition in CrI.MP.No. 2225 of 2016 in C.C.No.83 of 2013 under Section 311 Cr.P.C. to recall PW1 to PW6, which was dismissed by the trial Court on 09.09.2016, challenging which, the accused is before this Court.

4. The learned counsel for the accused submitted that the accused should be given one opportunity at least to cross examine the prosecution witnesses as otherwise undue prejudice would be caused to him.

5. Per contra, learned Additional Public Prosecutor submitted that the matter was posted for arguments and that at this stage, the petitioner has filed the present petition only to prolong the trial.

6. This Court gave its anxious consideration to the rival submissions.

7. In *Vinod Kumar v. State of Punjab* [2015(1) MLJ (Cr1) 288], the Supreme Court has clearly held that the accused should cross examine the witnesses on the day they are examined in chief. Pursuant to the aforesaid judgment of the Supreme Court, the Registrar General of this Court has issued circular to all the trial Courts in Tamilnadu to follow the mandates of *Vinod Kumar* case. The Supreme Court has explained the contours of powers under Section 311 Cr.P.C. in *A.G. Vs. Shiv Kumar Yadav and another*, [(2015) 9 Scale 649], where it is stated that reasons like change of counsel etc., cannot also be a ground for re-calling the prosecution witnesses.

8. Therefore, this Court does not find any serious infirmity in the order passed by the trial Court. However, this Court finds that the de-facto complainant in this case is a police constable who has been examined as PW1 on 28.10.2015 and Rajprabhu, Sub-Inspector of Police who completed the investigation, was examined only very recently on 01.07.2016.

9. Taking into consideration the facts and circumstances of the case, in the interest of justice, the trial Court is directed to re-call PW1 provided he is in service and is available in Tamil Nadu for giving evidence and PW6 on the date fixed by the trial Court within one month from the date of receipt of a copy of this order. On the appearance of PW1 and PW6 on the notified dates, the petitioner shall pay Rs.1000/- each as costs before putting them in witness box. On the appearance of the witnesses, if the petitioner does not cross examine them, he will forfeit his right to cross examine. Boycott of Courts shall not be a reason for not cross-examining the witnesses.

With the above direction, this petition is disposed of.

Sd/-  
Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

To

1. The Metropolitan Magistrate No.V,  
Egmore, Chennai.

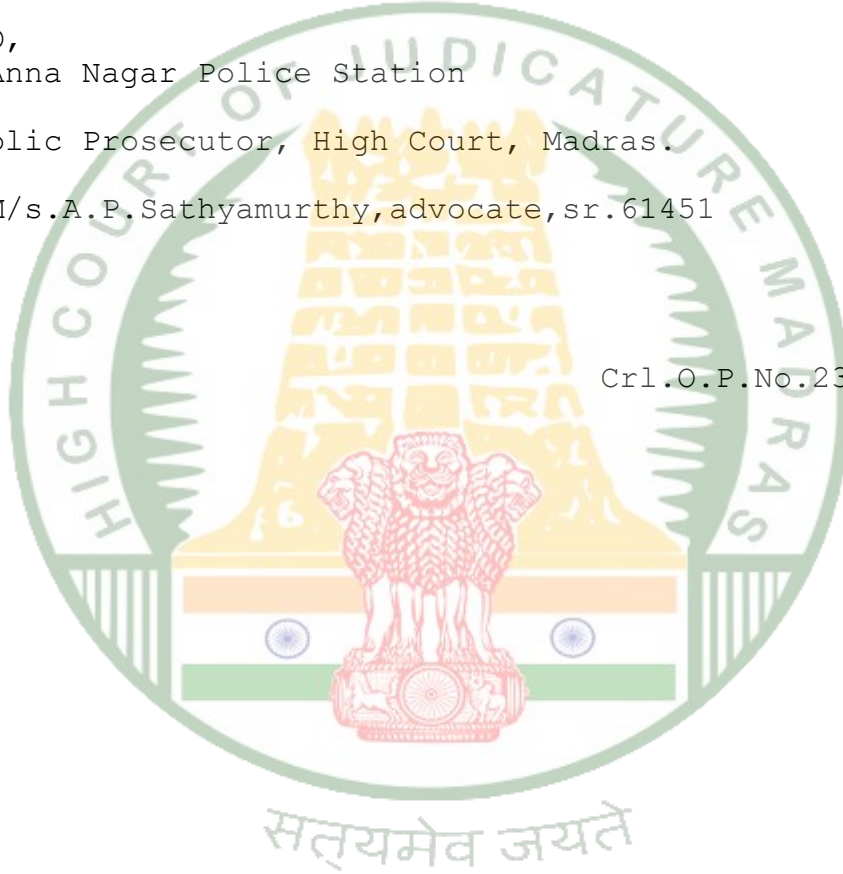
2. The SHO,  
K-4, Anna Nagar Police Station

3. The Public Prosecutor, High Court, Madras.

+1 cc to M/s.A.P.Sathyamurthy,advocate,sr.61451

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