

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.24511 of 2016

and

Crl.MP.No.11742 of 2016

Sivasubramaniam ... Petitioner/Accused

Vs

State rep. by
Sub Inspector of Police
Taluk Police Station
Pollachi Taluk
Coimbatore District. ... Respondent/Complainant
(Cr.No.34/2015)

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order passed by the learned Judicial Magistrate No.2, Pollachi made in C.M.P.No.5512/2016 in C.C.No.259/2015 dated 03.10.2016.

For Petitioner : Mr.M.N.Balakrishnan
For Respondent : Mr.C.Emalias
Additional Public Prosecutor

ORDER

This criminal original petition has been filed to set aside the order dated 03.10.2016 passed by the Judicial Magistrate No.2, Pollachi in C.M.P.No.5512/2016 in C.C.No.259/2015

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 CC.No.259/2015 before the Judicial Magistrate No.2, Pollachi for offences under Section 294(b), 324 & 506(ii) IPC. Charges were framed against the petitioner and between 22.08.2016 and 12.09.2016, the prosecution examined PW1 to PW7. For the reasons best known to the accused, the witnesses were not cross-examined. Thereafter,

the accused filed an application in CMP.No.5512/2016 to recall PW1 to PW7, which was dismissed by the trial Court on 03.10.2016, challenging which, the accused is before this Court.

4. Learned counsel appearing for the petitioner / accused submitted that on account of non-availability of main document, the petitioner did not cross examine the prosecution witnesses. He requested to give one more opportunity for the petitioner to recall and cross-examine the prosecution witnesses, as otherwise, undue prejudice would be caused to the accused.

5. This Court gave its anxious consideration to the submissions made by the learned counsel appearing for the petitioner.

6. 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 therein.

7. Therefore, the order passed by the trial Court cannot be said to be illegal or perverse. Apart from that the petitioner has not even stated any valid ground or explanation for not cross-examining the seven witnesses who were examined in chief by the prosecution.

8. However, this Court is of the view that some opportunity should be given to the petitioner, because, chief examination was done only recently on 22.08.2016 and immediately, thereafter the petitioner has filed the petition under Section 311 Cr.P.C.

9. Under such circumstances, this Court is of the considered opinion that it will be in the interest of justice, if the petitioner is permitted to cross examine PW1, who is the main witness in this case, on certain terms. Accordingly, the trial Court is directed to re-call PW1 on any day convenient to the trial Court and on the appearance of the PW1, the petitioner shall pay costs of Rs.1000/- to PW1 and cross examine him on the same day. It is made clear that boycott of Courts shall not be a reason for not cross-examining the witnesses.

With the above direction and observation, this petition is ordered. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

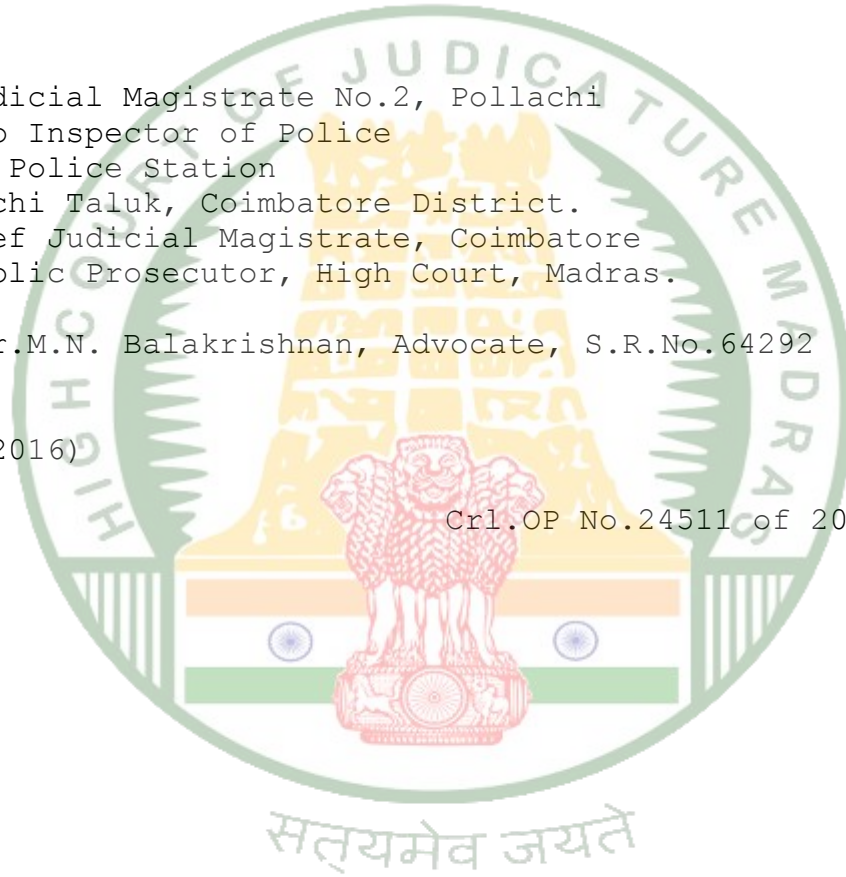
To

1. The Judicial Magistrate No.2, Pollachi
2. The Sub Inspector of Police
Taluk Police Station
Pollachi Taluk, Coimbatore District.
- 3 The Chief Judicial Magistrate, Coimbatore
4. The Public Prosecutor, High Court, Madras.

+lcc to Mr.M.N. Balakrishnan, Advocate, S.R.No.64292

rv (CO)
md(25/11/2016)

Cr1.OP No.24511 of 2016



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