

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.02.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.2716 of 2016

and

Crl.M.P.No.1428 of 2016

1.P.Gouthaman
2.Senthilkumar
3.V.Ravi @ Ravindiranath
4.Ragu @ Ragunath
5.S.Ramesh @ Dhandapani ...Petitioners

Vs.

The State rep.by
The Inspector of Police,
K-9, Thiru-Ve-Ka Nagar Police Station,
Chennai. ...Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in Crl.M.P.No.7 of 2016 in S.C.No.95 of 2012 pending on the file of the learned XVII Additional Sessions Judge, City Civil Court, Chennai, to examine and set aside the order passed in Crl.M.P.No.7 of 2016 dated 20.01.2016 and consequently, direct the learned XVII Additional Sessions Judge, City Civil Court, Chennai, to recall PW29, the investigating officer for cross examination.

For Petitioners:Mr.G.Prabhakaran

For Respondent :Mr.C.Emalias
Additional Public Prosecutor

O R D E R

Challenging the impugned order dated 20.01.2016 made in Crl.M.P.No.7 of 2016 in S.C.No.95 of 2012, dismissing the petition filed under Section 311 CrPC, the present Criminal Original Petition has been filed.

2.The learned counsel for the petitioners would submit that the petitioners are facing the criminal trial for offences punishable under Sections 147, 148, 341 and 302 IPC. All the witnesses have been examined and PW29, the

investigating officer, was not cross examined. Hence, the petitioners filed an application to recall PW29 for the purpose of cross examination. The trial Court, after hearing the parties, dismissed the application stating that from 18.11.2014 to 11.12.2015, on behalf of the defence, no effective steps taken for cross examination of PW29 on his appearance before the Court on 11.12.2015, with an intention to drag on the proceedings. Against which, the present petition has been filed.

3.A perusal of the typed set of papers reveals that the Investigating Officer/PW29 was examined in Chief on 18.11.2014. After 1½ years, the petition to recall PW29 was filed and it was dismissed by the trial Court on the ground of non co-operative attitude of the defence side in cross examining PW29 from 18.11.2014. Finally, PW29 was recalled and further chief-examination was conducted on 11.12.2015. It is pertinent to note that at the time of chief examination of PW29 on 18.11.2014, the learned Public Prosecutor filed a memo to examine PW30, the learned Judicial Magistrate who recorded the Section 164 CrPC statement of P.W.1 to P.W.4, since he was not cited as a witness. Hence, the learned Judicial Magistrate was examined as PW30 on 30.08.2015. Subsequently, PW29 has been recalled on 11.12.2015. Since he wants to get some material about the investigating officer, he is not in a position to cross examine on that day and he must be given a fair opportunity to put forth his defence in the cross examination of PW29.

4.Considering the submissions made by both sides, all the witnesses were examined and then and there, cross examination has been done. PW29 has been examined on 18.11.2014. At that time only, the learned Public Prosecutor came to know that the learned Judicial Magistrate, who recorded the 164 CrPC Statement given by the witnesses, was not cited as a witness and examined him and hence, Chief Examination has been closed. He was taken as an additional list of witness and he was examined on 13.08.2015. Then only, PW29 has been recalled and since he wants some time, he was not cross examined. In criminal jurisprudence, a fair opportunity should be given to the accused to put forth his defence. Admittedly, PW29 has not been cross examined. He was examined on 18.11.2014 and 11.12.2015. Inasmuch as the reasons assigned by the learned XVII Additional Judge, is unsustainable. A fair opportunity has to be given.

5.Hence, this Criminal Original Petition is allowed and PW29, the investigating officer, is directed to appear before the trial Court on or before 14.03.2016. Further, the petitioner is directed to conclude his cross-examination on the same date, when PW29 appears before the Trial Court,

without fail. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

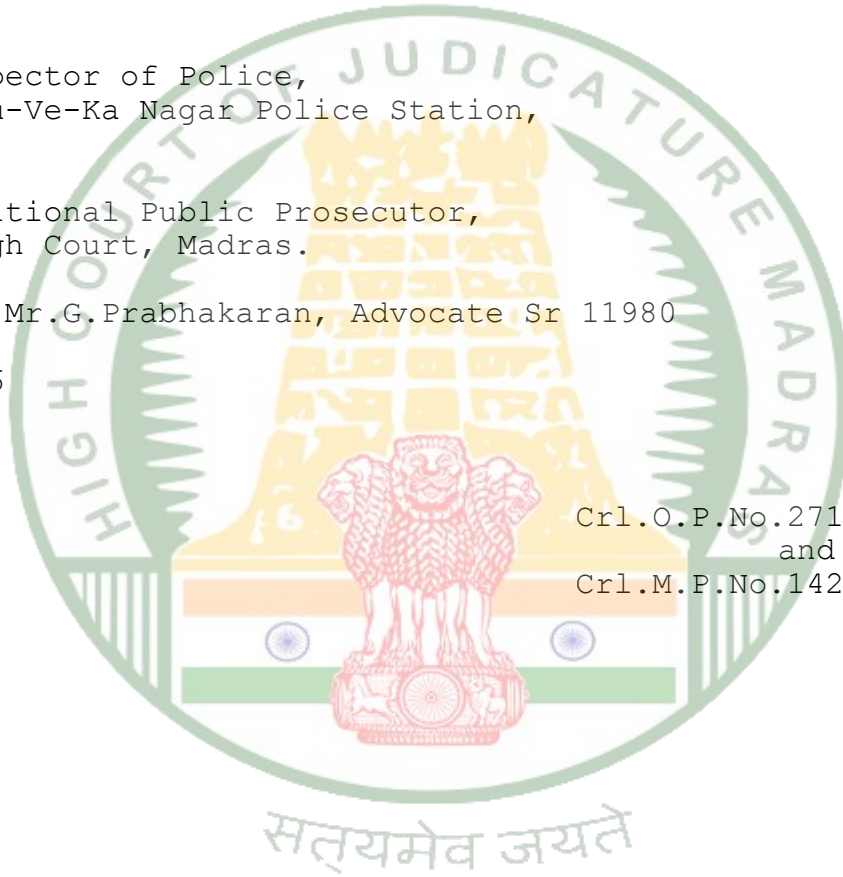
To

1.The Inspector of Police,
K-9, Thiru-Ve-Ka Nagar Police Station,
Chennai.

2.The Additional Public Prosecutor,
Madras High Court, Madras.

+ 1 cc to Mr.G.Prabhakaran, Advocate Sr 11980

KR/29/2/16



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