

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.7608 of 2016

Vasanthalingam

.. Petitioner

vs

State rep. by
The Inspector of Police,
Bhuvanagiri Police Station,
Cuddalore District.
(Crime No.406 of 2013)

.. Respondent

Prayer:- This Criminal Original Petition is filed under Section 482 Cr.P.C. to set aside the order in C.M.P.No.5663 of 2015 dated 11.02.2016 by the District Munsif cum Judicial Magistrate, Parangipettai.

For Petitioner : Mr.S.Shankar

For Respondent : Mr.C.Emalias

Additional Public Prosecutor

ORDER

The petitioner has come forward with this petition to set aside the order in C.M.P.No.5663 of 2015 dated 11.02.2016 by the District Munsif cum Judicial Magistrate, Parangipettai.

2.The petitioner, who is an accused has filed a petition in C.M.P.No.5663 of 2015 before the learned District Munsif cum Judicial Magistrate, Parangipettai to recall P.W.1 to P.W.3, P.W.5 and P.W.9 for cross examination since they were not cross examined when they were examined before the Trial Court. After hearing both sides, the Trial Court has dismissed the said petition. Against which, the present Criminal Original Petition has been filed.

3.The learned counsel appearing for the petitioner submitted that P.W.1 to P.W.3, P.W.5 and P.W.9 were not cross examined when they were examined before the Trial Court. He further submitted that to put forth his defence, an opportunity must be given to him. That factum was not considered by the Trial Court. He would also submit that he is ready to abide any

condition that would be imposed by this Court and he is ready to cross examine the witnesses on the date that would be fixed by this Court.

3.At this juncture, the learned Additional Public Prosecutor submitted that the Trial Court has rightly considered the decision of the Apex Court in Vinoth Kumar vs. State Bank of Punjab, wherein it was held that the trial cannot be adjourned periodically. He further submitted that the petitioner has filed the petition to recall P.W.1 to P.W.3, P.W.5 and P.W.9 after eight months and so, the Trial Court has passed a well reasoned order. Hence, he prayed for dismissal of the petition.

4.During the course of argument, the learned counsel for the petitioner submitted that he restricts his prayer to recall P.W.1 to P.W.3 and P.W.9.

5.Considered the rival submissions made by both sides and perused the typed set of papers.

6.It is well settled dictum of the Hon'ble Apex court that a fair opportunity must be given to the accused to put forth his defence. Further, in the decision of the Hon'ble Apex Court relied upon by the Trial Court in Vinoth Kumar vs. State Bank of Punjab, it was stated that the duty of the Court is to see that for proper and fair trial, not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded.

7.In such circumstances, I am of the view that to meet the ends of justice, it is a fit case for allowing the petition on condition. Accordingly, the Criminal Original Petition is allowed and the order passed by the learned District Munsif cum Judicial Magistrate, Parangipettai in C.M.P.No.5663 of 2015 dated 11.02.2016 is hereby set aside subject to the following conditions:

- a) The petitioner is directed to deposit a sum of Rs.4,000/- on the file of the learned District Munsif cum Judicial Magistrate, Parangipettai on or before 11.04.2016.
- b) On such deposit, the Trial Court is directed to pay Rs.1,000/- to each witnesses, namely, P.W.1 to P.W.3 and P.W.9 on 13.04.2016.
- c) P.W.1 to P.W.3 and P.W.9 were directed to appear before the Trial Court on 13.04.2016. The petitioner is directed to cross-examine the witnesses, namely, P.W.1 to P.W.3 and P.W.9 on that day itself.

d) The petitioner is also directed to pay Travelling Allowance and Day Allowance to each witnesses which will not cause any hindrance or loss to the witnesses.

cse

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

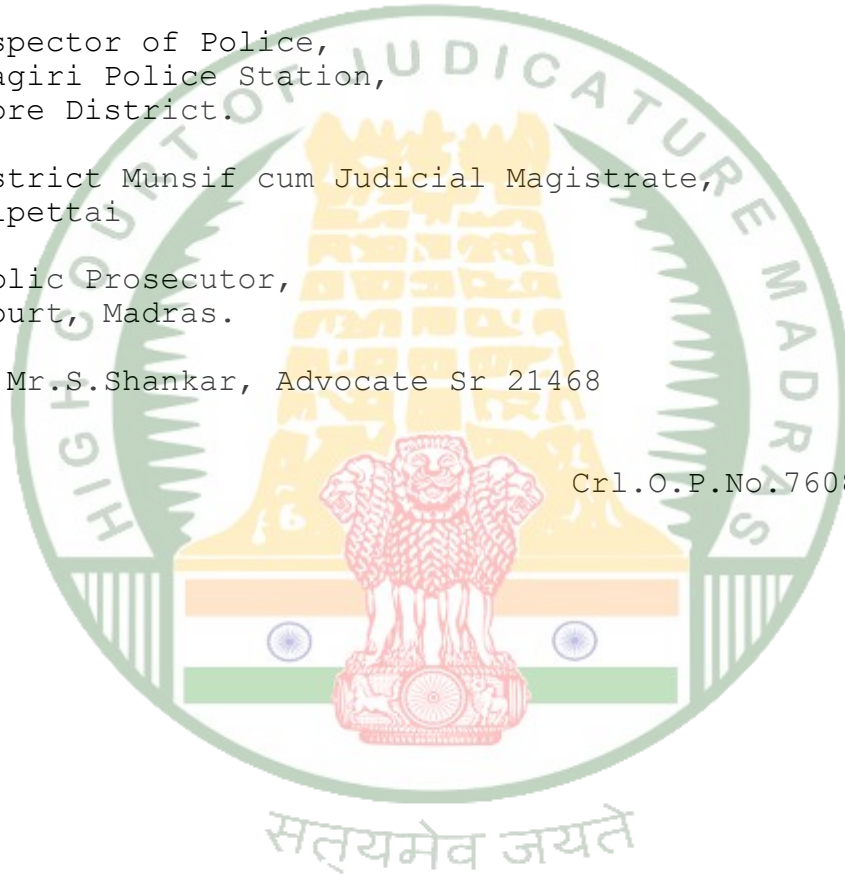
To

1. The Inspector of Police,
Bhuvanagiri Police Station,
Cuddalore District.
2. The District Munsif cum Judicial Magistrate,
Parangipettai
3. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.S.Shankar, Advocate Sr 21468

sns(co)
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