



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2016

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

CrI.O.P(MD)No.21844 of 2016

and

CrI.M.P. (MD) .No.11253 of 2016

Prakash @ Jeya Prakash

.. Petitioner

vs.

State represented by
The Inspector of Police,
Vadapathimangalam Police Station,
Thanjavur District.
(In Crime No.26 of 2015)

.. Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order of the learned I-Additional District and Sessions Judge (PCR Court), Thanjavur, made in Cr.M.P.No.1856 of 2016 in S.S.C.No.59 of 2015, dated 23.09.2016 and allow the petitioner to recall PW1 to PW5 for cross-examination.

For Petitioner : Mr.S.R.Anbarasu

For Respondent : Mr.K.Anbarasan

Government Advocate (CrI.side)

O R D E R

The petitioner, who is the sole accused in S.S.C.No.59 of 2015, on the file of the learned I-Additional District and Sessions Judge (PCR Court), Thanjavur, filed this application to set aside the order passed in Cr.M.P.No.1856 of 2016 in S.S.C.No.59 of 2015, dated 23.09.2016.

2. The prosecution in order to prove the case, has examined PWs.1 to 5 on 02.11.2015. The accused has not cross-examined the witnesses. After the closure of the prosecution evidence, the petitioner filed a petition under Section 311 Cr.P.C., to recall PWs.1 to 5 for the purpose of cross examination. Since the learned Sessions Judge dismissed the application, the present petition is filed.

3. Mr.S.R.Anbarasan, learned counsel for the petitioner would submit that PWs.1 to 5 could not be cross-examined by the accused on 02.11.2015, due to advocate's boycott. When, the witnesses appeared again on 11.08.2016, on that day also, due to advocate's boycott, the witnesses were not cross-examined. It is further contended that except PWs.1 to 5, the accused has cross-examined the remaining 21 witnesses and to meet the ends of justice, the petitioner should be given an opportunity to cross-examine PWs.1 to 5.

<https://hcservices.courts.tn.in/hcservices> The learned counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court, in *State of Haryana vs. Ram Mehar & Others Etc.*, wherein it has been held as follows:



"32. The Court referred to the earlier decisions and culled out certain principles which are to be kept in mind while exercising power under Section 311 CrPC. We think it seemly to reproduce some of them:-

"17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.

17.4. The exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

x x x x x x x x x

17.10. Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified."



5. Further, the learned counsel for the petitioner would submit that the petitioner is willing to donate Rs.25,000/- (Rupees twenty five thousand only) to the School Management Committee, Panchayat Union Primary School, Saptur Village, Madurai, having A/c.11535482586.

6. Per contra, the learned Government Advocate (Crl. Side) would submit that the petitioner has not availed the opportunity already provided and therefore he is not entitled for any indulgence of this Court.

7. Taking into consideration, the charges framed against the petitioner, in the light of the decision of the Hon'ble Supreme Court cited supra and the submission of the learned counsel for the petitioner, this Court is of the opinion that the petitioner could be given one more opportunity to cross-examine PWs.1 to 5.

8. In view of the above, the order passed by the learned I-Additional District and Sessions Judge (PCR Court), Thanjavur, in Cr.M.P.No.1856 of 2016 in S.S.C.No.59 of 2015, dated 23.09.2016 is set aside. The petitioner is permitted to donate Rs.25,000/- to the School Management Committee, Panchayat Union Primary School, Saptur Village, Madurai, within a period of one week from the date on which the order copy is made ready and also directed to cross-examine the witnesses PWs. 1 to 5 on the same day of their appearance before the trial court.

9. Accordingly, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

1. I-Additional District and Sessions Judge (PCR Court),
Thanjavur,

2. Do through the Principal Sessions Judge,
Thanjavur District at Kumbakonam

3. The Inspector of Police, Vadapathimangalam Police Station,
Thanjavur District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.S.R.Anbarasu, Advocate, SR.No.71234

PJL

RL/6C/3P/SS2/SARI/1.12.2016