

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2017

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.302 of 2017

and Crl.M.P.No.205 of 2017

Rani @ Punithavalli

... Petitioner

Vs

The State, rep. by

The Inspector of Police,
Erode North Police Station,
Erode District.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 4.11.2016 passed in C.M.P.No.150 of 2016 in s.c.No.109 of 2006 on the file of the I Additional District and Sessions Judge, Erode, and permitted the petitioner to re-call the said witness C.W.1 for cross examination to arrive at just decision of the case.

For Petitioner : Mr.S.Sankar

For respondent : Mr.C.Emalias,
Addl. Public Prosecutor

ORDER

The present criminal original petition has been filed to set aside the order dated 4.11.2016 passed in C.M.P.No.150 of 2016 in S.C.No.109 of 2006 on the file of the learned I Additional District and Sessions Judge, Erode, and to permit the petitioner to re-call C.W.1 for cross examination to arrive at a just decision of the case.

2. It is the case of the petitioner that he has been arrayed as accused No.1 in S.C.No.109 of 2006 on the file of the I Additional District and Sessions Judge, Erode. During the course of trial, the petitioner filed an application in C.M.P.No.150 of 2016 to recall the Court Witness No.1 to establish the malafidness of the investigating officer in preparing the observation mahazar and rough sketch. But, the same was dismissed by the trial Court on the ground that though the petitioner was present along with their counsel, they have not chosen to cross examine C.W.1. Challenging the same, the petitioner has come up with the present petition.

3. Learned counsel appearing for the petitioner submitted that at the time of chief examination, C.W.1 marked as many as 34 documents. However, the petitioner was not given an opportunity of perusing those documents to cross examine C.W.1. Hence, the petitioner filed a petition to recall C.W.1. But, without considering those aspects, the trial Court dismissed the application filed by the petitioner under Section 311 Cr.P.C. Hence, the petition.

4. I have also heard the learned Additional Public Prosecutor, who has fairly submitted that the order of the trial Court cannot survive.

5. Considering the facts and circumstances of the case and in view of the said submissions made by the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor, this Court is inclined to set aside the order of the trial Court.

6. Accordingly, the order of the learned I Additional District and Sessions Judge, Erode, dated 4.11.2016 passed in C.M.P.No.150 of 2016 in S.C.No.109 of 2006 is set aside and the criminal original petition is allowed. The petitioner as well as the prosecution are permitted to examine C.W.1 on 3.3.2017, on which date, the cross examination shall be completed and no further petition under Section 311 Cr.P.C. or adjournment be entertained. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The I Additional District and Sessions Judge, Erode.
- 2.-do- Thro The Principal Sessions Judge, Erode
- 3.The Inspector of Police,
Erode North Police Station,
Erode District.

4.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.S.S.Shankar Advocate sr 10138 dt 21/02/2017

Cr1.O.P.No.302 of 2017

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