

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.O.P.No.8796 of 2017
and
Crl.MP No.6295 of 2017

K.V.Viswanathan .. Petitioner

Vs

State rep. by
Station House officer,
K-6, Police Station,
Chennai – 600 010. .. Respondent

Petition filed under Section 482 of the Criminal Procedure Code,
to set aside the order dated 11.04.2017 passed by the V Metropolitan
Magistrate, Egmore in Crl.MP No.1068 of 2017 in CC No.6695/2014
and allow the petition.

For Petitioner : Mr.S.Parthasarathy

For Respondent : Mr.Muhammed Riyaz, GA (Crl.Side)

ORDER

This Criminal Original Petition has been filed to set aside the
order dated 11.04.2017 passed by the learned V Metropolitan
Magistrate, Egmore, Chennai in Crl.MP No.1068 of 2017 in
CC No.6695/2014.

2. The case of the petitioner is that he is facing trial for the offences punishable under Section 379 IPC r/w Sections 39(i) and 44(1)(c) of the Indian Electricity Act in CC No.6695 of 2014 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai. During the course of trial, P.W.1 to P.W.6 were examined and Exs.P1 to P7 were marked. While so, the petitioner filed a petition in CMP.No.3960 of 2016 under Section 311 Cr.P.C to recall PW.1 to PW.6 for the purpose of cross examination. By order dated 22.11.2016, the said petition was allowed by the learned V Metropolitan Magistrate, Egmore, Chennai. After issuance of the summons to the witnesses, the case was posted for cross examining those witnesses on 22.02.2017, on which date, the petitioner along with his counsel was present, but the case was passed over. When the matter was called at 4.00pm, the learned counsel for the petitioner did not appear, as he was held up in Saidapet Court, due to which, the evidence was closed and the case was adjourned. Subsequently, the learned counsel for the petitioner reached the trial court at 4.20pm and requested to cross examine the witnesses, which was denied by the trial court. Thereafter, the petitioner filed a petition in CMP.No.1068 of 2017 under Section 311 Cr.P.C to recall the witnesses P.W.1, P.W.2, P.W.5 and P.W.6 for cross examination. However, by order dated 11.04.2017, the said petition was dismissed on the ground that the

reasons assigned by the petitioner are not convincing. Aggrieved over the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that without providing an opportunity to the petitioner to cross examine the witnesses, the learned Magistrate has closed the evidence, which is arbitrary and against the principles of natural justice.

4. Per contra, the learned Additional Public Prosecutor taking notice for the respondent, submitted that the petitioner was provided sufficient opportunity to cross examine the witnesses, however, he failed to avail the same. Therefore, the order impugned herein is perfectly correct and in accordance with law.

5. Irrespective of the submissions made on either side, this Court, considering the facts and circumstances of the case, is inclined to grant one more opportunity to the petitioner to recall those witnesses for the purpose of cross examination. Accordingly, the petitioner is directed to appear before the learned V Metropolitan Magistrate, Egmore, Chennai on 03.07.2017 and file a petition under Section 311 Cr.P.C to recall P.W.1, P.W.2, P.W.5 and P.W.6 for cross examination. On such appearance and upon filing such application,

the learned Magistrate shall consider the same and permit the petitioner to cross examine those witnesses on the same day itself. It is made clear that no further adjournment be granted and no Section 311 Cr.P.C petition be entertained by the trial court. The petitioner shall ensure the presence of the witnesses by issuance of notice well in advance.

6. The Criminal Original Petition is disposed of in the above terms. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/No
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19.06.2017

NOTE: ISSUE ON 22.06.2017

To

1.The V Metropolitan Magistrate, Egmore, Chennai.

2.The Station House officer,
K-6, Police Station,
Chennai – 600 010.

3.The Public Prosecutor,
Madras High Court,
Chennai-600 104.

R.MAHADEVAN, J.

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