

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CrI.O.P.No.3852 of 2017

Baskar

... Petitioner

Vs

State rep by:

The Inspector of Police,
Vysarpadi Police Station,
Chennai.

(Crime No.736 of 2015)

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed in CrI.M.P.No.523 of 2016 in S.C.No.167 of 2016 on the file of the XV Additional Sessions Judge, Fast Track Court, Chennai.

For Petitioner : Mr.R.Ganesh

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

ORDER

The present petition has been filed challenging the order passed by the learned XV Additional Sessions Judge, City Civil Court, Chennai in CrI.M.P.No.523 of 2016 in S.C.No.167 of 2016, dismissing the application filed under Section 311 Cr.P.C. to recall P.W.5 and P.W.6 for the purpose of cross examination.

2. It is the case of the petitioner that P.W.5 and P.W.6 were examined in chief on 14.11.2016 and on that day, due to some personal inconvenience, the counsel for the petitioner was not able to cross examine the above said witnesses. Thereafter on 21.11.2016, he has filed an application to recall both P.W5 and P.W.6 for the purpose of cross examining them. The trial court, by an order dated 17.02.2017 dismissed the application. Challenging the same, the petitioner has filed the present petition.

3. Mr.R.Ganesh, learned counsel appearing for the petitioner submits that since the witnesses were not cross examined on 14.11.2016 due to the personal inconvenience of the counsel for the petitioner and immediately on 21.11.2016, the petitioner has filed an application to recall the witnesses and prayed for allowing this petition.

4. Mr. C.Emalias, learned Additional Public Prosecutor submits that trial has already been over and the matter is posted for arguments.

5. Considering the facts and circumstances of the case and taking into consideration of the fact that since the petitioner's counsel was not able to cross examine the witnesses due to his personal inconvenience and in order to give an opportunity to the petitioner to cross -examine the witnesses, this Court is inclined to set aside the said order.

6. Accordingly, the order of learned XV Additional Sessions Judge, City Civil Court, dated 17.02.2017 made in C.M.P.No.523 of 2016 in S.C.No.167 of 2016, is set aside and the trial court is directed to recall P.W.5 and P.W.6 on 30.03.2017 and the petitioner is directed to cross examine the said witnesses on the very same day itself. The trial Court is directed to dispose of the case within a period of one month thereafter.

Sd/-

Assistant Registrar (CS III)

/true copy/

Sub Asst. Registrar

mrp

To

1. The XV Additional Sessions Judge,
City Civil Court, Chennai.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Ganesh, Advocate, S.R.No.12389

Cr1.O.P.No.3852 of 2017

SS(CO)
CA(01.03.2017)