

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.01.2017
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

CrI.O.P.No.26688 of 2016
and
CrI.M.P.No.13396 of 2016

C.Visnuvardhanon .. Petitioner

Vs

1.State

rep.by Inspector of Police,
District Crime Branch, Erode.
(Crime No.23 of 2011).

2.Nazar @ Nasiruddin

3.R.Suresh .. Respondents

Petition filed under Section 482 of the Criminal Procedure Code, to set aside the order dated 08.12.2016 passed by the Chief Judicial Magistrate at Erode in C.M.P.No.3532 of 2016 in C.C.No.88 of 2015.

For Petitioner : Mr.R.G.Narendhiran

For Respondents : Mr.C.Emalias,
Additional Public Prosecutor for R1

Mr.M.Guruprasad for R2 and R3

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 08.12.2016 passed by the Chief Judicial Magistrate at Erode in C.M.P.No.3532 of 2016 in C.C.No.88 of 2015.

2.The complainant, the first respondent herein, filed a petition before the Chief Judicial Magistrate, Erode, in C.M.P.No.3532 of 2016 in C.C.No.88 of 2015 to recall P.W.1 for filing additional documents relating to original cellphone of P.W.1 along with CD recorded messages and cellphone conversation between P.W.1 and the accused 1 and 3. The said petition came to be dismissed on 08.12.2016, against which the present Criminal Original Petition is filed.

3.The learned counsel for the petitioner / de facto complainant has submitted that it is very much necessary to recall P.W.1 (de facto complainant) for submitting additional documents on the side of the prosecution, to prove the guilt of the accused 1 to 4.

4.Mr.C.Emalias, learned Additional Public Prosecutor takes notice for the first respondent.

5.It is settled law that a petition under Section 311 Cr.P.C cannot be filed at any time before the judgment is delivered, but at the same time, it has to be explained by the petitioner as to how the evidence of the witness is enabling to the just decision of the case. It is also to be borne in mind that the factum that P.W.1 has already been examined, cannot be a ground to dismiss the petition under Section 311 Cr.P.C filed to recall PW.1 in order to validly prove the case. In this case, the said petition has not been filed with much delay.

6.Taking into consideration the facts and circumstances of the case, this Court deems it appropriate to set aside the order dated 08.12.2016 passed by the Chief Judicial Magistrate, Erode in CMP.No.3532 of 2016 in CC No.88 of 2015 and to permit the petitioner to recall P.W.1 along with all the material evidence, for examination. Such exercise shall be done on 24.01.2017. It is made clear that no further claim of the petitioner be entertained to recall on the same lines or grant any further adjournments.

7.The Criminal Original Petition is disposed of accordingly. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Chief Judicial Magistrate Erode

2.The Inspector of Police,
District Crime Branch, Erode.

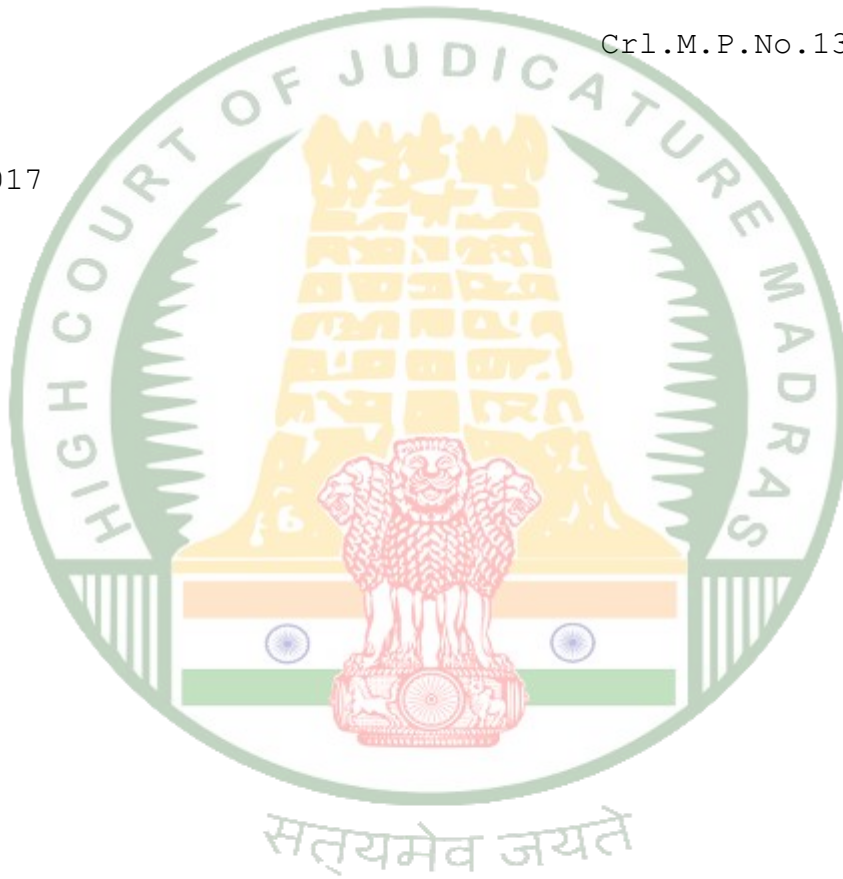
WEB COPY

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

+1 cc to Mr.M.Guruprasad Advocate sr 2200
+1 cc to Mr.R.G.Narendhiran Advocate sr 1837

CrI.O.P.No.26688 of 2016
and
CrI.M.P.No.13396 of 2016

aa10/01/2017



WEB COPY