

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.20113 of 2018
AND CRL.M.P.No.10718 of 2018

A.L.Muthu

.. Petitioner

Vs

State by
Inspector of Police,
K-8, Arumbakkam Police Station,
Arumbakkam,
Chennai - 600 106.
Crime No.37 of 2004

.. Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the adjudication order dated 18.07.2018 made in C.C.No.26905 of 2004 on the file of the V Metropolitan Magistrate, Egmore at Allikulam Complex, Chennai and permit him to cross-examine the witnesses PW1 and PW3.

For Petitioner : Mr.S.M.Nandhie Devhan

For Respondent : Mr.C.Raghavan
Govt. Advocate

O R D E R

The petitioner is A2 in C.C.No.26905 of 2004 for offence under Section 380 r/w 109 IPC. The complainant was examined as PW1 on 06.12.2017. On that day, the accused did not cross-examine PW1. The accused filed a defer petition for deferring the cross-examination of PW1. It was dismissed by the trial Court. Despite that, the accused did not choose to cross-examine PW1. The prosecution proceeded to examine PW2, whom also the accused did not choose to cross-examine. Thereafter, the Investigating Officer was examined as PW3. He was also not cross-examined by the accused, after the examination in-chief. A2 filed Crl.M.P.No.1790 of 2018 in C.C.No.26905 of 2004 under Section 311 Cr.P.C. to recall PW1 and PW3. A1 filed Crl.M.P.No.1789 of 2018 for the same relief. The trial Court, by order dated 11.07.2018, allowed the petition to recall PW1,

on condition that the accused shall deposit witness batta of Rs.1000/- within seven days. Since the accused did not deposit the said amount, the trial Court passed the following order on 18.07.2018 :

"A1 and A2 absent. Petition u/s.317 Cr.P.C. filed and allowed. Witness betta and process fee not paid. Conditional order in CrI.M.P.No. 1789/2018 and 1790/2018 are not complied. Hence petitions are closed. DW's by 01.08.2018."

Challenging the order dated 18.07.2018, Muthu/A2 is before this Court.

2.Heard the learned counsel for the petitioner/accused and the learned Government Advocate.

3.Learned counsel for the accused submitted that the failure to deposit the amount is neither willful nor wanton, because the order was not pronounced in the open Court.

4.In the opinion of this Court, this cannot be a good reason, because all the orders are being uploaded in the website and the accused cannot be heard to say and the accused cannot give such explanation. This Court is of the view that it will be in the interest of justice, if one more opportunity is given to both the accused. It may be relevant to state that both the accused were absent on 18.07.2018. This conduct of the accused itself shows that they have been adopting dilatory tactics, for which, NBW can be issued and they can be remanded to custody. This Court does not want to take this extreme step. Hence, in order to give an opportunity to the accused, the order dated 18.07.2018 is set aside.

5.The petitioner/accused is directed to deposit Rs.4,000/- as witness batta before the V Metropolitan Magistrate on or before 27.08.2018. On such deposit, the trial Court shall recall both PW1 and PW3 and give Rs.2,000/- each as witness batta. If the accused fails to deposit the said sum of Rs.4,000/- on or before 27.08.2018, he will forfeit his right to recall PW1 and PW3. On the appearance of PW1 and PW3, the Assistant Public Prosecutor in charge of the case and the trial Court shall first furnish them the copy of the deposition to refresh their memory and only then, they can be subjected to cross-examination by the accused. On the day when PW1 and PW3 appears for giving evidence, if the petitioner fails to cross-examine them due to boycott of courts, the petitioner will forfeit his right to cross-examine them. If the accused adopts any dilatory tactics, he can be remanded to custody in view of the law laid down by the Supreme Court in State of U.P. Vs Shambunath Singh (JT 2001 [4] SC 319). If the accused absconds, a fresh FIR can be registered under Section 229-A IPC. This order would equally apply to Moorthy/A1 and any application filed by him to once again recall the witnesses need

not be entertained. In other words, on the appearance of PW1 and PW3, both A1 and A2 shall cross-examine them.

With the above direction, this petition is ordered accordingly. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.V Metropolitan Magistrate,
Egmore at Allikulam Complex,
Chennai.

2.Thro The Chief Metropolitan Magistrate,
Egmore, Chennai.

3.The Inspector of Police,
K-8, Arumbakkam Police Station,
Arumbakkam,
Chennai - 600 106.

4.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.S.M.Nandhie Devhan, Advocate sr.no.55903

CRL.OP.No.20113 of 2018

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nr 16/08/2018

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