

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.20441 of 2018
and CRL.M.P.No.10979 of 2018

Nadanapathi ... Petitioner/Accused
Vs

State rep.by
Inspector of Police,
Vaduvloor Police Station,
Thiruvarur District. ... Respondent/complainant

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order dated 05.07.2018 passed by the learned Judicial Magistrate No.I, Mannargudi, Thiruvarur District in Crl.M.P.No.4303 of 2018 in C.C.No.247 of 2012.

For Petitioner : Mr.Swami Subramanian
For Respondent : Mr.C.Raghavan, GA

O R D E R

The petitioner is facing prosecution in C.C.No.247 of 2012 before the Judicial Magistrate No.I, Mannargudi for an offence under section 304(A) IPC. The prosecution have so far examined 9 witnesses and the petitioner has not cross-examined any of them. While so, the petitioner filed C.M.P.No.4303 of 2018 in C.C.No.247 of 2012 under Section 311 Cr.P.C. for recalling PW1 to PW9, which has been dismissed by the trial Court on 05.07.2018, challenging which, the petitioner is before this Court.

2.Heard Mr.Swami Subramanian, learned counsel for the petitioner and learned Government Advocate.

3.Mr.Swami Subramanian submitted that the petitioner is facing prosecution for a serious offence under Section 304(A) IPC and if no opportunity is given to the petitioner to cross-examine the witnesses, undue prejudice will occur.

4.Per contra, learned Government Advocate refuted the contentions.

5.This Court gave its anxious consideration to the rival submissions. The case before the trial Court is of the year 2012. PW1 to PW7 were examined in-chief on 15.07.2013. The petitioner did not cross-examine the said witnesses, when they were examined in-chief. The petitioner has filed the present petition in C.M.P.No.4303 of 2018 4½ years later. Even in the petition filed by the petitioner under Section 311 Cr.P.C., he has not given any valid reasons, as to why he did not cross-examine the witnesses, when they were examined in-chief on 15.07.2013. Therefore, this Court does not find any infirmity in the order passed by the Trial Court warranting interference.

6.However, this Court is of the view that interest of justice will be served, if an opportunity is given to petitioner to cross-examine PW1, PW8 and PW9 alone. The trial Court shall verify whether PW1 is still available or whether he has gone out of Tamil Nadu. If PW1 is available, the trial Court shall summon PW1 on a date fixed by the Court. On the appearance of PW1, the petitioner shall pay cost of Rs.1,000/- to PW1. The Assistant Public Prosecutor in charge of the case and the trial Court shall furnish deposition in-chief to PW1, for him to refresh his memory, only thereafter, he can be subjected to cross-examination. The same methodology should be adopted to PW8 and PW9. If the petitioner does not cross-examine the witnesses, when they appear, he will forfeit his right to cross-examine them. Boycott of Court will not be a reason for the petitioner not to cross-examine PW1, PW8 and PW9, when they appear for giving evidence. If the petitioner adopts any dilatory tactics, it is open to the trial Court to remand him to custody, in the light of the law laid down by the Supreme Court in State of U.P. Vs Shambunath Singh JT 2001 [4] SC 319 and proceed with the trial. With the above direction, this petition is ordered accordingly. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Pns/gya

To

1.Judicial Magistrate Court No.I,
Mannargudi, Thiruvarur District.

2.The Inspector of Police,
Vaduvoor Police Station,
Thiruvarur District.

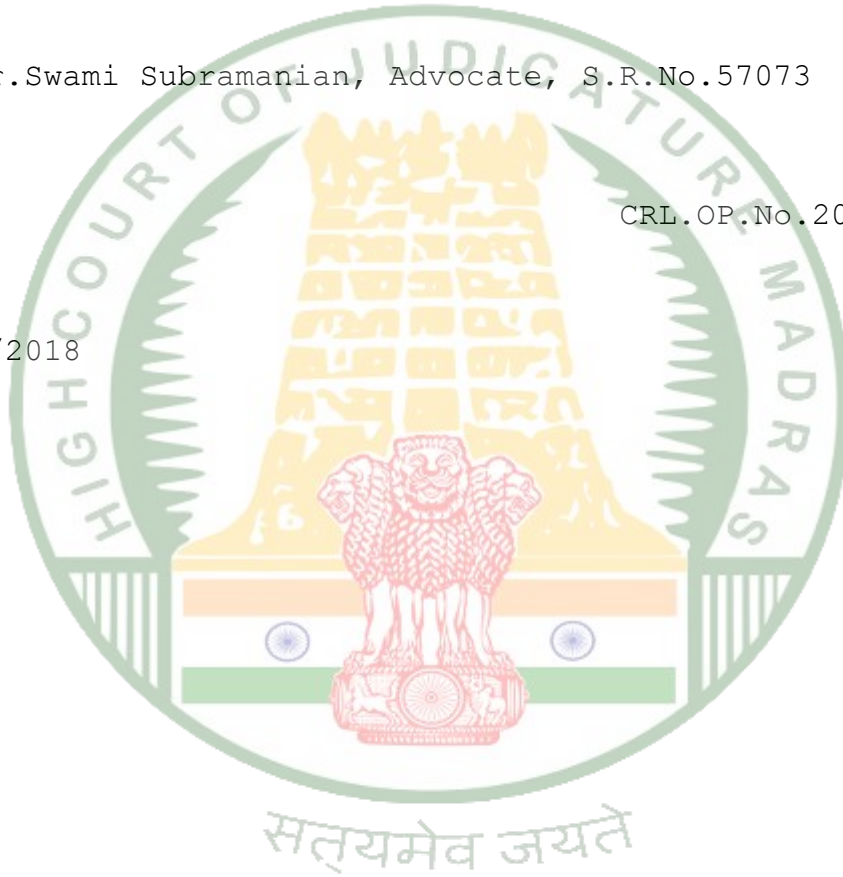
3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Swami Subramanian, Advocate, S.R.No.57073

CRL.OP.No.20441 of 2018

SAI (co)

rrs 06/09/2018



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