

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2018
CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.10456 of 2018
and
Crl.M.P.No.5345 of 2018

Mansoor Basha
S/o.K.C.Basha

...Petitioner

vs.

State Rep. by
Inspector of Police
K-9, Police Station
Chennai.

...Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. to call for the records of the order dated 26.03.2018 passed by the learned V Metropolitan Magistrate at Egmore, (Allikulam) Chennai - 3 in M.P.No.1313/2018 in C.C.No.51 of 2015 and set aside the same.

For petitioner : Mr.M.Anandaraj
For Respondent : Mrs.Kritika Kamal. P
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed seeking to call for the records of the order dated 26.03.2018 passed by the Metropolitan Magistrate No.V at Egmore, (Allikulam) Chennai - 3 in M.P.No.1313/2018 in C.C.No.51 of 2015 and set aside the same.

2. On the complaint lodged by one E.Babu, the respondent police registered a case in Crime No.1200/2014, after completing the investigation has filed the charge sheet in C.C.No.51/2015 before the V Metropolitan Magistrate, Egmore, Chennai, for the offences under Sections 341 and 323 IPC against Mansoor Basha (A1) and Shakitha Begum (A2). After charges were framed, the trial Court began the examination of PW1 to PW5 from 17.06.2016 to 06.04.2017. PW1 to PW5 were examined in chief, but they were not cross examined by the accused for the reasons best known to them. The accused filed Crl.MP.No.1313/2015 in C.C.No.51/2015 under Section 311 Cr.PC for recalling PW1 to PW5, but, it has been dismissed by the trial Court on 26.03.2018. Challenging the same, the first accused is before this Court.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent.

4. The learned counsel for the petitioner submitted that on the complaint given by A1, a counter case has been registered against PW1 (E.Babu) and the charge sheet has been filed in C.C.No.52 of 2015 before the Metropolitan Magistrate No.V, Egmore, Chennai.

5. In such view of the matter, it is very much essential to recall PW1 to PW5 for the purpose of cross examination.

6. Per contra, the learned Government Advocate for the respondent submitted that she has no instructions with regard to the counter case in C.C.No.52 of 2015, as contended by the learned counsel for the petitioner.

7. This Court gave its anxious consideration to the rival submissions.

8. It is a practice in the trial Court not to cross examine the witnesses and keep protracting the trial in order either to tire out the witnesses or turn them hostile. That is why in Vinoth Kumar vs. State of Punjab [2015(1) MLJ (Crl) 288], the Supreme Court has issued a direction to the trial Court to ensure that the witnesses are cross examined on the day itself they are examined in chief. The trial Court has correctly dealt with the matter, by referring two judgments of the Supreme Court in Vinoth Kumar vs. State of Punjab [2015(1) MLJ (Crl) 288], and A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649]. There is no infirmity in the order passed by the trial Court. However, since there is a counter case, in which the petitioner has to be examined as PW1, this Court is of the view that the interest of justice would be served, if an opportunity is granted to the accused (A1 & A2) to cross examine E.Babu (PW1) and Yuvaraj (PW5) on terms. Admittedly, A2 is the wife of A1, who strangely has not joined with A1 to file this petition, though she was one of the petitioner in Crl.MP.No.1313 of 2018. When this was brought to the notice of the learned counsel for the petitioner, he fairly submitted that the order passed by this Court will bind A2 also and that she will not separately challenge the order of the trial Court in Crl.MP.No.1313 of 2018.

9. In such view of the matter, this Court directs the petitioner to deposit a sum of Rs.1,000/- per witness as costs (totally Rs.2000/-) within a period of one week from the date of receipt of a copy of this order. On such deposit, the trial Court shall recall PW1 & PW5 alone for the purpose of cross

examination by A1 & A2. On the day of appearance of PW1 and PW5, the costs of Rs.1,000/- each shall be paid to them. They will be entitled to refresh their memory, by reading the chief examination that was given by them earlier. On the day of their appearance, the accused shall cross examine them. In this case, boycott of Courts cannot be stated as a reason for not cross-examining PW1 & PW5 when they appear.

10. With the above directions, this Criminal Original Petition is ordered. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mk

To

1.The Metropolitan Magistrate
Egmore (Allikulam)
Chennai.

2.The Inspector of Police
K-9, Police Station
Chennai.

3.The Public Prosecutor
High Court Madras

+1cc to Mr.M.Anandaraj, Advocate, S.R.No.24718

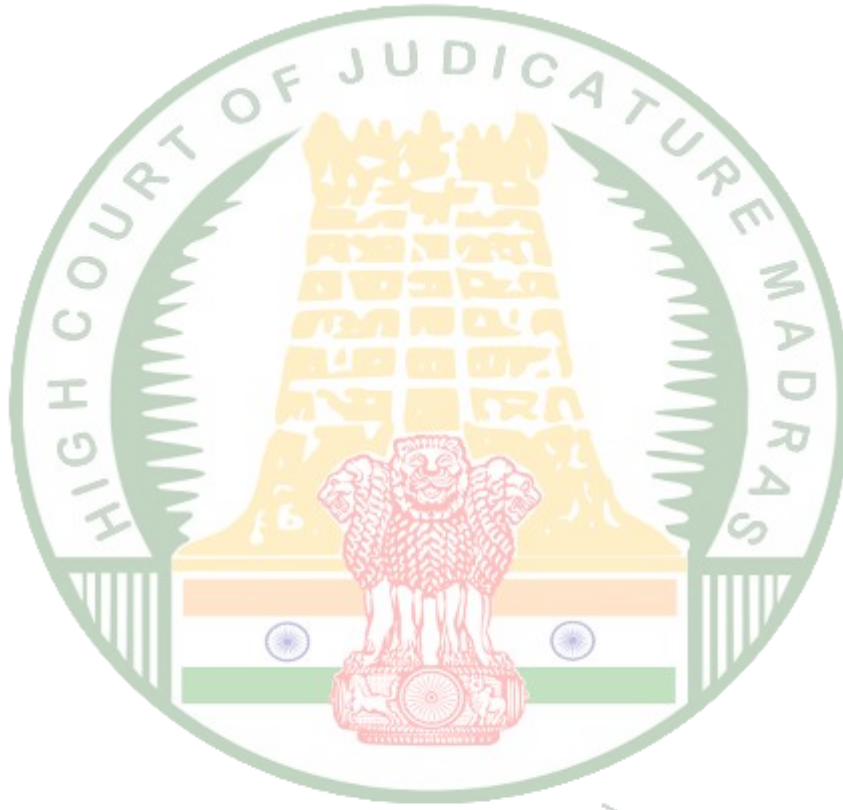
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Crl.O.P. No.10456 of 2018

NRL (CO)

RRK (05/04/2018)

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