

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.08.2018

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.20848 of 2018

Balakumar

.. Petitioner

Vs

State rep. by
The Inspector of Police,
K-4 Anna Nagar Police Station,
Chennai-40.

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to set aside the order passed in Crl.M.P.No.2749 of 2018 in C.C.No.3938 of 2012 on 04.07.2018 by the V Metropolitan Magistrate, Egmore.

For Petitioner : Mr.R.Ramsankar

O R D E R

The petitioner is facing a prosecution in C.C.No.3938 of 2012 under Section 304[A] IPC. The prosecution examined PW1 on 07.03.2018, PW2 on 28.03.2018, PW3 to PW5 on 02.05.2018. The accused did not chose to cross-examine these witnesses, for the reasons best known to him. Thereafter, the accused filed Crl.M.P.No.2749 of 2018 in C.C.No.3938 of 2012 under Section 311 Cr.P.C. for recalling PW1 to PW5, which has been dismissed by the trial Court by the impugned order dated 04.07.2018. Challenging which, the accused is before this Court.

2.Heard Mr.Vijayakumar, learned counsel for the accused and the learned Government Advocate.

3.Mr.Vijayakumar submitted that PW1 to PW5 were eye-witnesses and therefore, they were not cross-examined by the accused, immediately after they were examined in-chief.

4.This Court is unable to countenance this submission, because when a witness is examined in-chief, it is the duty of the accused to cross-examine the witness on the same day, as directed by the Supreme Court in Vinodh Kumar Vs State of Punjab reported in 2015[1] MLJ [Crl] 288. In fact, the Registrar General of this Court has issued a Circular to all the trial Courts in the State to strictly follow the dictum of the Supreme Court in Vinodh Kumar's case stated supra. Had the accused filed 311 application on 02.05.2018, there could

have been some bonafide in his claim. On the contrary, after all the witnesses were examined, he has filed 311 application only on 13.06.2018.

5. Under such circumstances, this Court does not find any infirmity in the order passed by the trial Court. However, since, PW1 and PW2 were examined only in March 2018 and that apart, the accused is facing a prosecution under Section 304 [A] IPC, this Court is of the view that some indulgence may be shown to the accused for cross-examining PW1 and PW2 alone.

6. In the result, this petition is partly allowed. The trial Court is directed to ascertain whether PW1 and PW2 are available in Tamil Nadu, if they are not available in Tamil Nadu and they are on employment elsewhere, they cannot be recalled. If PW1 and PW2 are available, the trial Court shall fix a date and recall them. On their appearance, the accused should pay them Rs.1,000/- each as cost. The Assistant Public Prosecutor in charge of the case and the trial Court shall permit the witness to read their deposition in-chief, for them to refresh their memory and only thereafter, they can be subjected to cross-examination by the accused. On the appearance of the witnesses, if the accused fails to cross-examine them even on account of boycott of Courts, the accused will forfeit his right to cross-examine them.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

gya

To
1.V Metropolitan Magistrate,
Egmore.

2.The Inspector of Police,
K-4 Anna Nagar Police Station,
Chennai-40.

+ 1 cc to Mr.Ramsankar, Advocate Sr.58624

CRL.OP.No.20848 of 2018

(CS-DR)
EU(07/09/2018)