

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.11299 of 2018
and CRL.M.P.No.5839 of 2018

Karunanidhi

.. Petitioner

Vs

Diwakar

.. Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to the proceedings of the order in C.M.P.No.6176 of 2017 in STC.No.119 of 2016 on the file of the Judicial Magistrate No.I, Virudhachalam, Cuddalore District and set aside the same.

For Petitioner : Mr.M.Senthil Kumar
For Respondent : C.Raghavan
Government advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed praying to set aside the order dated 23.03.2018, passed by the learned Judicial Magistrate No.I, Virudhachalam, Cuddalore District in C.M.P.No.6176 of 2017 in STC.No.119 of 2016.

2.For the sake of convenience, the parties will be referred to as complainant and accused. The complainant was examined in-chief on 17.02.2017 and the case was posted for cross-examination to several dates. In spite of several opportunities, the accused did not come forward to cross-examine the complainant. Therefore, the evidence of the complainant was closed and the accused was questioned under Section 313 of Cr.P.C. Thereafter, the accused filed C.M.P.No.6176 of 2017 to recall P.W.1 for cross-examination. The trial Court, allowed the petition on 23.03.2018, on condition that the accused should pay cost of Rs.1,000/- to the complainant on or before 27.03.2018, failing which, the petition will stand automatically dismissed. The accused did not pay the amount as ordered by the trial Court and therefore, the accused forfeited his right to cross-examine

P.W.1. Hence, the accused is before this Court.

3. Heard the learned counsel for the accused, who submitted that if one opportunity is given to the accused to cross-examine the witness by paying the accused, he would do that.

4. In the opinion of this Court, the trial Court has given several opportunities to the accused to cross-examine P.W.1., in spite of which, the accused has not cross-examined P.W.1. In fact, the trial Court has allowed the recall petition on terms, namely, to pay Rs.1,000/- as cost to the complainant. The accused did not avail of this opportunity also.

5. In the case of A.G. Vs Shiv Kumar Yadav reported in 2015[9] Scale 649, the Hon'ble Supreme Court has stated that a petition under Section 311 of Cr.P.C. could not be mechanically ordered by the trial Court. However, this Court is of the view that the accused can be afforded an opportunity to cross-examine P.W.1, provided the accused deposits the cheque amount before the trial Court within a period of four weeks from the date of receipt of a copy of this order.

6. This Court does not want to issue notice to the complainant, because that will cause undue prejudice, by further delaying the case. The petitioner is directed to deposit the cheque amount of Rs.2,00,000/- to the credit of S.T.C.No.119 of 2016 within a period of four weeks from the date of receipt of a copy of this order. The petitioner shall also pay a cost of Rs.2,000/- to the complainant before 14.05.2018. On such deposit and payment, the trial Court is directed to recall P.W.1 for cross-examination by the accused. On that date, the accused shall cross-examine the witness, even if there is boycott of courts. The trial Court shall disburse the sum of Rs.2,00,000/- either to the complainant or to the accused, depending upon final outcome of the case in S.T.C.No.119 of 2016. The accused shall execute a bond for Rs.5,000/- under Section 88 Cr.P.C. without sureties to the satisfaction of the trial Court. If the accused absconds, a fresh FIR can be registered against him under Section 229-A of IPC. The above terms will apply, only if the final judgment has not been passed in S.T.C.No.119 of 2016. If the petitioner fails to deposit Rs.2,00,000/- before 14.05.2018, the petitioner will automatically forfeit his right to cross-examine P.W.1. and the trial Court can pass final judgment in S.T.C.No.119 of 2016. No extension of time will be permitted by this Court.

With the above direction, this Criminal Original Petition

is ordered accordingly. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

gya

To

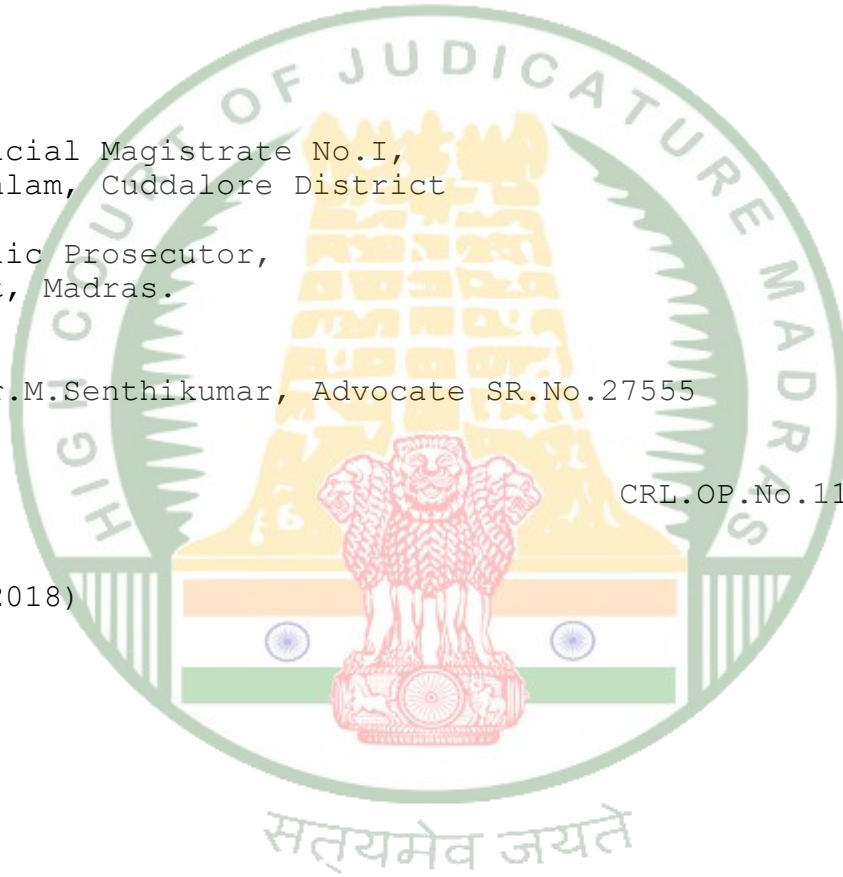
1.The Judicial Magistrate No.I,
Virudhachalam, Cuddalore District

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Senthikumar, Advocate SR.No.27555

CRL.OP.No.11299 of 2018

LRS (CO)
GN(13/04/2018)



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