

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2018

CORAM

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

Crl.OP No.21584 of 2018

Esakkiraja

..Petitioner

Vs

State Rep. By
The Inspector of Police,
Ramanatham Police Station,
Cuddalore District.

..Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C, praying to set aside the order in Crl.M.P.No.573 of 2018 in S.C.No.453 of 2017 dated 30.07.2018 passed by the learned Sessions Judge, Mahila Court and may be pleased to recall PW1 and PW5 and permit the counsel for petitioner to cross examine them.

For Petitioner : Mr.A.Gopinath

For Respondents : Mr.C.Raghavan
Government Advocate (Crl. Side)

O R D E R

This petition has been filed by the accused to set aside the order passed by the learned Sessions Judge, Mahila Court, Cuddalore in Crl.M.P.No.573 of 2018 in S.C.No.453 of 2017 dated 30.07.2018.

2. The learned counsel for the petitioner has submitted that the petitioner is facing trial for the alleged offences under Sections 498-A and 304-B IPC. He further submitted that on behalf of the prosecution, P.Ws.1 to 13 were examined and they were cross examined on the same date when the said witnesses were examined in chief. He further submitted that subsequently, the petitioner came to know that while cross-examining P.Ws.1 and 5 some material questions were omitted to ask with regard to the contradictions to the statement recorded by R.D.O and hence the petitioner has filed a petition in Crl.M.P.No.573 of 2018 on 30.07.2018 to recall P.Ws.1 and 5 for further cross

examination, but the learned trial Judge, without considering the petitioner's request, has rejected the said petition and hence he requests to set aside the said order and an opportunity may be given to the petitioner to further cross examine P.Ws.1 and 5.

3. The learned Government Advocate (Crl. Side), relying upon the decision of the Hon'ble Supreme Court in AG Vs. Sukumar (Crl.A.No.1187 and 1188 of 2015 dated 10.09.2015), has submitted that since already opportunity was given to the petitioner to cross-examine P.Ws.1 and 5, this petition is not maintainable.

4. In A.G Vs. Sukumar and another (Supra), after closing the prosecution evidence, the accused were questioned under Section 313 Cr.P.C., and thereafter an application for recalling of prosecutrix (P.W.2) and formal witness (P.W.23) who booked the cab was made. But the same was rejected and the said order was never challenged. Thereafter, the accused engaged another counsel and filed another application under Section 311 Cr.P.C to recall all the 28 prosecution witnesses and the said petition was also dismissed by the trial Court, against which the accused approached the High Court under Section 482 Cr.P.C. The High Court has allowed the said petition. Aggrieved by the same, the victim as well as the State moved the Hon'ble Supreme Court by filing appeals. Taking into consideration of the aforesaid facts, the Hon'ble Supreme Court has allowed the said appeals and dismissed the application for recall, whereas in this case, the prosecution evidence is not yet closed. As per the submissions made by the learned counsel for the petitioner and also learned Government Advocate (Crl. Side) the case before the Trial Court is posted to 18.09.2018 for taking evidence of the Investigating Officer. Further, this is the first application filed to recall P.Ws.1 and 5 and that too only for a limited purpose that is to ask questions with regard to some contradictions which were omitted to put at the time of cross examination of those witnesses. Therefore, the aforesaid decision of the Hon'ble Supreme Court will not apply to the facts of this case.

5. The trial Court, relying upon the decision of the Hon'ble Supreme Court in Vinoth Kumar Vs. State of Punjab observed that the change of counsel does not give any right to the accused to recall prosecution witnesses. In this case, the petitioner has not only relied upon the ground that he has changed the counsel but also on the ground that some material questions were omitted to ask during cross examination of P.Ws.1 and 5.

6. Taking into consideration of all the aforesaid facts and also the fact that the petitioner is facing serious charges, this Court is inclined to grant one more opportunity to the

petitioner to further cross-examine P.Ws.1 and 5. However, he should be put on terms.

7. In the result, this petition will be allowed on deposit of a sum of Rs.5,000/- (Rupees Five Thousand only) before the District Legal Services Authority, Cuddalore on or before 19.09.2018, failing which this petition shall stand dismissed.

8. If the petitioner has complied with the aforesaid condition and produced the receipt to that effect, the trial Court has to recall P.Ws.1 and 5 and give an opportunity to the petitioner to further cross examine them. The petitioner is directed to cross examine the aforesaid witnesses as soon as they appear before the trial Court without asking any adjournment.

9. With the aforesaid directions, this petition is disposed of.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Ramanatham Police Station,
Cuddalore District.

2. The Public Prosecutor
High Court, Madras.

+1cc to Mr.A.Gopinath, Advocate, S.R.No.63898

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CS/14/09/18

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