

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 20.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.22448 of 2018
and
CRL.M.P.No.12415 of 2018

SathishkumarPetitioner/Accused

Vs.

The State rep.by,
The Inspector of Police,
Fairlands Police Station,
Salem.Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 07.09.2018 made in Crl.M.P.No.1290 of 2018 in S.C.No.214 of 2013 on the file of Sessions Judge, Mahila Court, Salem.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : Mrs.M.Prabhavathi
Additional Public Prosecutor

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O R D E R

This petition has been filed by the accused to set aside the order passed by the Sessions Judge, Mahila Court, Salem in Crl.M.P.No.1290 of 2018 in S.C.No.214 of 2013 dated 07.09.2018.

2.The leaned counsel for the petitioner has submitted that the petitioner is facing trial for the charges under Sections 498(A) and 306 Indian Penal Code. He further submitted that during trial, 14 witnesses were examined as PW1 to PW14 on the side of the prosecution and thereafter, the prosecution has filed a petition under Section 311 Cr.P.C to examine one Kavitha as PW15 and the said petition was allowed by the trial Court and said Kavitha was examined as PW15 and on the same day, the petitioner/accused also cross-examined the said witness. He further submitted that the petitioner has filed a petition under Section 311 Cr.P.C in Crl.M.P.No.1290 of 2018 to recall PW14, to

ask questions, with regard to the fact that why PW15 was not examined by the Investigating Officer, but, the trial Court has dismissed the said petition by saying that since the said witness was not examined by the Investigating Officer, he cannot be contradicted with reference to the evidence adduced by PW15. He further submitted that since the said witness was not examined by the Investigating Officer, he has to be cross examined to the effect that why the said witness was not examined by him during investigation and hence, he requests to set aside the order passed by the trial Court and give an opportunity to the petitioner to cross-examine the investigating officer.

3.The learned Additional Public Prosecutor has supported the order passed by the trial Court.

4.Admittedly, PW15 was not examined by the Investigating Officer during investigation. After examining the Investigation Officer as PW14, PW15 was examined by the prosecution. If PW15 was already examined before examination of PW14, the accused would have an opportunity to cross examine PW14, with reference to the evidence adduced by PW15 also. But, in this case, only after examining Investigating Officer as PW14, PW15 was examined and therefore, in the interest of justice, the petitioner should be given an opportunity to cross-examine the PW14, with reference to the evidence adduced by PW15. In such a case, the prosecution also will have the benefit of giving an explanation as to why the said witness was not examined by the Investigating Officer during investigation.

5.Taking into consideration of all the aforesaid facts, this petition is allowed and the order passed by the learned trial Judge in Crl.M.P.No.1290 of 2018 in S.C.No.214 of 2013 is set aside. The learned trial Judge is directed to recall PW14 and give an opportunity to the petitioner to cross-examine him. The petitioner is directed to cross-examine the PW14, as soon as he appears before the trial Court, without seeking further adjournment.

6.With the aforesaid directions, this Criminal Original Petition stands disposed of. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

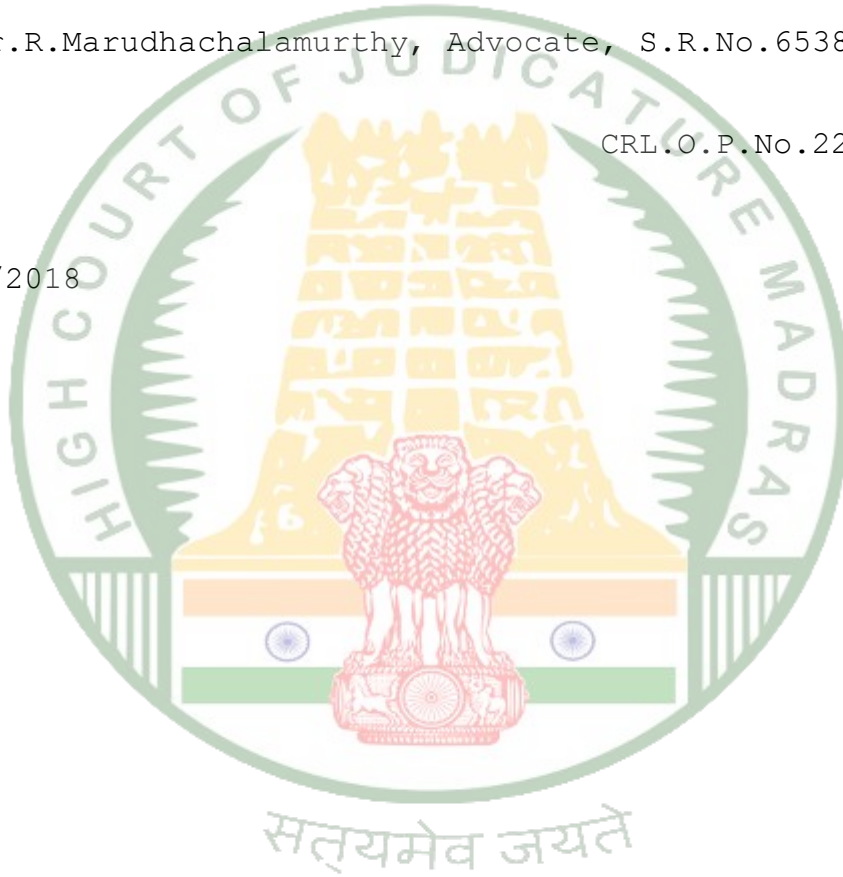
1. The Sessions Judge,
Mahila Court, Salem.
2. The Inspector of Police,
Fairlands Police Station,
Salem.
3. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.65382

CRL.O.P.No.22448 of 2018

KK(CO)

rrs 08/10/2018



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