

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2018

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.12223 of 2018

K.S.Damodharan

...Petitioner

Vs.

The State

Rep. by Inspector of Police
CCB, Egmore, Chennai-8.

... Respondent

Criminal Original Petition is filed under Section 482 of Cr.P.C seeking a direction to set aside the order dated 15.02.2018 passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai-8, dismissing Crl.MP.No.2519 of 2017 in C.C.No.316 of 2007, in recalling insofar as PW-7 is concerned.

For Petitioner : Mr.C.P.Sivamohan

For Respondent : Mrs.Kritika Kamal.P.

Government Advocate (Crl. Side)

O R D E R

This criminal original petition has been filed seeking a direction to set aside the order dated 15.02.2018 in Crl.MP.No.2519 of 2017 in C.C.No.316 of 2007, passed by the Chief Metropolitan Magistrate, Egmore, Chennai-8.

2. The petitioner is facing prosecution in C.C.No.316 of 2007, before the Chief Metropolitan Magistrate, Egmore, Chennai. The prosecution examined PW1 to PW7, but the accused did not cross-examine the witnesses, when he was examined in chief. Thereafter, the accused filed a Crl.MP.No.2519 of 2017 in C.C.No.316 of 2007 under Section 311 Cr.P.C., for re-calling all the prosecution witnesses. The trial Court, by the impugned order dated 15.02.2018, has re-called PW2 to PW4 and PW6, but did not re-call PW7. Aggrieved by the refusal of the trial Court to re-call PW7, the accused is before this Court.

3. Heard Mr.C.P.Sivamohan, learned counsel for the accused and Mrs.Kritika Kamal.P, learned Government Advocate (Crl. Side) for the respondent.

4. The learned counsel for the accused submitted that PW7 is a very important witness and that the accused will cross-examine PW7 without adopting any dilatory tactics.

5. However, the reason given by the trial Court is that PW7 was 63 years old, when she gave evidence on 05.08.2015. That apart, PW7 had given only evidence based on documents. Hence, the trial Court has held that no useful purpose will be served by re-calling PW7. In A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], the Supreme Court has laid down the parameters for exercise of powers under Section 311 Cr.P.C., by the trial Court. In the opinion of this Court, the reason given by the trial Court for not re-calling PW7 cannot be stated to be perverse warranting interference. In fact, in Vinoth Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288], the Supreme Court has very clearly held that the prosecution witnesses should be cross-examined on the day itself, they are examined in chief.

6. Hence, in view of the above pronouncements made by the Supreme Court, this petition is closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Metropolitan Magistrate,
Egmore, Chennai.

2. The Inspector of Police
CCB, Egmore, Chennai-8.

3.The Government Advocate (Cr1.Side)
High Court, Madras.

+1cc to Mr.C.P.SIVAMOHAN, Advocate, S.R.No. 30972

Cr1.O.P.No.12223 of 2018

TR(04/05/2018)