

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.16734 of 2018

Hari hara Sudharsan

.. Petitioner/Accused

Vs

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

.. Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crl.M.P.No.3306 of 2017 in C.C.No.2434 of 2015 on the file of the V Metropolitan Magistrate, Allikulam, Chennai-3 and to examine the correctness of the order passed in Crl.M.P.No.3306 of 2017 in C.C.No.2434 of 2015 dated 07.03.2018 on the file of the V Metropolitan Magistrate and set aside the same.

For Petitioner : Mr.M.Anandaraj
For Respondent : Ms.P.Kritika Kamal,
GA [Crl. Side]

O R D E R

The petitioner is facing prosecution in C.C.No.2434 of 2015 for the offences under Section 294[b], 324 and 506[2] of IPC before the learned V Metropolitan Magistrate, Egmore, Chennai. The prosecution examined their witnesses, who were not cross-examined by the accused. The accused filed Crl.M.P.No.3306 of 2017 in C.C.No.2434 of 2015 under Section 311 Cr.P.C. for recalling PW1, PW2 and PW11, which has been dismissed by the trial Court on 04.10.2017. Challenging the said order, the accused is before this Court.

2.Heard Mr.Anandaraj, learned counsel for the accused, who submitted that the trial Court Advocate had failed to cross-examine the witnesses and on account of his mistake, the party should not suffer.

3.Per contra, learned Government Advocate refuted the contentions.

4. On a reading of the impugned order, this Court does not find any infirmity therein. PW1 and PW2 were examined in-chief on 13.07.2016 and 311 Cr.P.C. application was filed only in the year 2017. That apart, though the trial Court had dismissed Cr1.M.P.No.3306 of 2017 on 04.10.2017, the accused has approached this Court only in June 2018.

5. Mr. Anandaraj submitted that the accused filed earlier Cr1.O.P.No.23320 of 2017, but, however, on account of some dispute with the counsel, it was withdrawn on 25.05.2018 hurriedly before the vacation Court.

6. Be that as it may, this Court is not satisfied with the reasons for recalling PW1 and PW2. However, this Court is of the view that interest of justice will be served, if the trial Court is directed to recall PW11 alone, provided he is not dead and that he is available in town. On the date fixed by the trial Court, PW11 shall be summoned and a cost of Rs.1,000/- [Rupees One Thousand Only] shall be paid by the accused to the PW11. The Assistant Public Prosecutor in the trial Court and the learned Magistrate shall give the deposition in-chief to PW11 for him to refresh his memory and only thereafter, he could be put into witness box for cross-examination. If on the date of appearance of PW11, if the accused does not cross-examine him, even on account of boycott of Courts, the accused will forfeit his right to cross-examine PW11.

With the above direction, this petition is ordered accordingly.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

gya

To
1.V Metropolitan Magistrate,
Egmore, Chennai

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

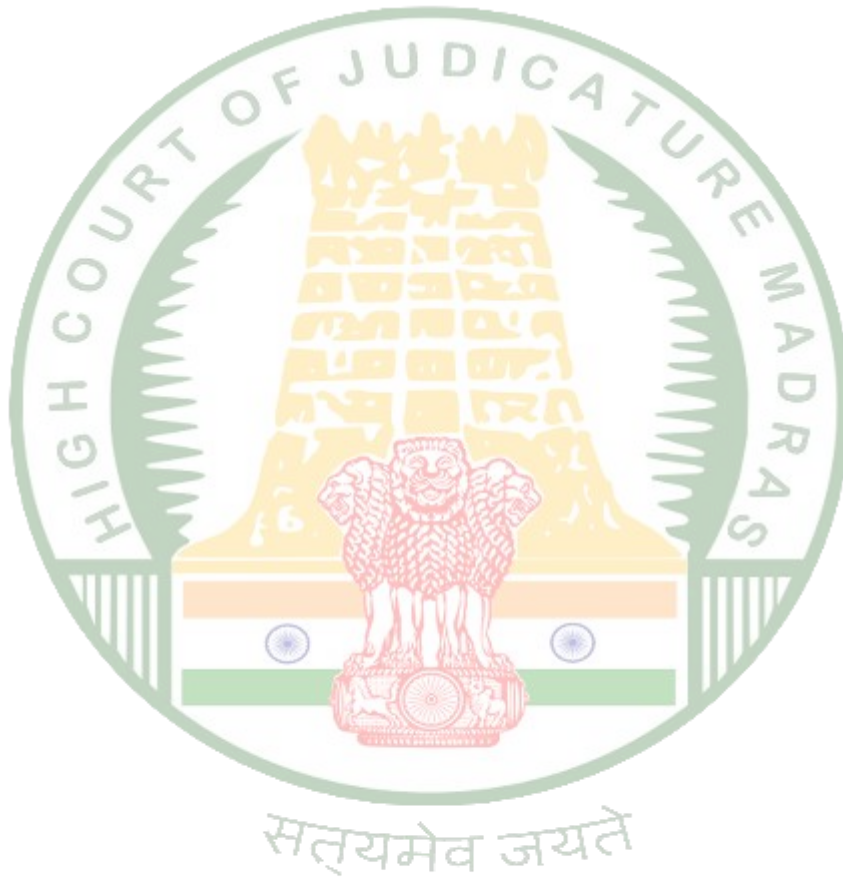
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3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.M.Anandaraj, Advocate in sr.no.41802

CRL.O.P.No.16734 of 2018

nr 09/07/2018



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