

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.16735 of 2018

Anandakumar

.. Petitioner

Vs

The Inspector of Police,
K-8 Arumbakkam Police Station,
Chennai.

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crl.M.P.No.367 of 2018 in C.C.No.8791 of 2008 on the file of the V Metropolitan Magistrate, Allikulam, Chennai-3 and to examine the correctness of the adjudication order passed in Crl.M.P.No.367 of 2018 in C.C.No.8791 of 2008 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 a prosecution in C.C.No.8791 of 2008 for the offences under Section 457 and 380 IPC before the learned V Metropolitan Magistrate, Egmore, Chennai. The prosecution examined their witnesses and they were not cross-examined by the accused for the reasons best known to him. The accused filed Crl.M.P.No.367 of 2018 in C.C.No.8791 of 2008 under Section 311 Cr.P.C. to recall PW1 to PW5, which was allowed by the trial Court on 28.02.2018, on condition that the accused should deposit Rs.1,000/- as cost for each witness, totally amounting to Rs.5,000/- within seven days from 28.02.2018. The accused did not pay the amount and therefore, he lost his right to cross-examine the witnesses. Hence, the accused is before this Court.

2.Heard Mr.Anandaraj, learned counsel for the accused and the learned Government Advocate [Crl. Side] appearing for the respondent and perused the materials placed on record.

3.Mr.Anandaraj, learned counsel for the accused submitted that the accused is working in a crematorium and he did not have means to deposit Rs.5,000/-. However, it is seen that this case is of the year 2008 and PW1 and PW2 were examined on 15.04.2009. PW3 and PW4 were examined on 02.09.2009 and PW5 was examined on 08.11.2017. The accused did not cross-examine the witness for the reason best known to him. This Court is of the view that there is no infirmity in the order passed by the trial Court warranting interference.

4.However, this Court is of the view that interest of justice will be served, if an opportunity is given to the accused to cross-examine PW1 and PW5, provided they are available in town. If they are employed outside Tamilnadu, they cannot be recalled. On the day fixed by the trial Court, PW1 and PW5 shall be present and they will be paid Rs.1000/- each as cost. The Assistant Public Prosecutor and the trial Court shall furnish them their deposition in-chief, so that they can refresh their memory before getting into the witness box for cross-examination. This exercise shall be completed within one month from the date of receipt of a copy of this order. If the accused does not cross-examine PW1 and PW5 when they are produced, even if there is boycott of Court, the accused will forfeit his right to cross-examine them. If the accused absconds, a fresh FIR can be registered under Section 229-A IPC. The trial shall be completed within a period of three months from the date of receipt of a copy of this order. If the accused does not co-operate, he can be remanded to custody in terms of the law laid down by the Supreme Court in State of U.P. Vs Shambunath Singh JT 2001 [4] SC 319.

With the above direction, this petition is ordered accordingly.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

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To

1.V Metropolitan Magistrate,
Egmore, Chennai(Allikulam)

2.The Inspector of Police,
K-8 Arumbakkam Police Station,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr. Anandraj, Advocate sr 41801.

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SP(09/07/2018)



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