

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.17457 of 2018

1.Vijayan
2.Kasthuri

... Petitioners

Vs

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

...Respondent

Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure to set aside the order passed in Crl.MP.No.4560 of 2017 in C.C.No.13667 of 2008 dated 7th March 2018 by the learned V Metropolitan Magistrate, Egmore, Chennai and to re-call the prosecution witnesses PW1 and PW2.

For Petitioners :Mr.N.Sudharsan
For Respondent :Mr.C.Raghavan
Government Advocate (Crl. Side)

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 07.03.2018 passed in Crl.MP.No.4560 of 2017 in C.C.No.13667 of 2008 by the V Metropolitan Magistrate, Egmore, Chennai and to re-call the prosecution witnesses PW1 and PW2.

2.The petitioners are facing prosecution in C.C.No.13667 of 2008 for the offence under Section 420 IPC. The petitioners filed Crl.MP.No.4560 of 2017 in C.C.No.13667 of 2008 to re-call PW1 & PW2, which has been dismissed by the trial Court on 07.03.2018, challenging which, the petitioners are before this Court.

3.Heard Mr.N.Sudharsan, learned counsel for the petitioners/accused and Mr.C.Raghavan, learned Government Advocate (Crl. Side) for the respondent.

4.The learned counsel for the petitioners/accused submitted that one opportunity deserves to be given to the petitioners/accused to cross-examine PW1 & PW2, failing which, undue prejudice will be caused to their case.

5.Per contra, the learned Government Advocate (Crl. Side) refuted the contention.

6.This Court gave its anxious consideration to the rival submissions.

7.In a case of this nature, normally, the trial Court and this Court will liberally consider such request, provided, the same has been made within a reasonable time. In this case, the charge sheet was filed in the year 2008; PW1 & PW2 were examined on 14.09.2011; the petitioners/accused filed a petition under Section 311 Cr.P.C to re-call PW1 & PW2 and the said petition was allowed by the trial Court; on 3.5.2017, PW1 & PW2 were present before the Court, but the learned counsel on record did not cross-examine the witnesses on the ground that he was not in station; therefore, the trial Court sent back the witnesses.

8. Proviso to Section 309 Cr.P.C., reads as follows:

" (a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment."

9. In Vinod Kumar vs. State of Punjab [2015(1) MLJ (Crl) 288] and A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], the Supreme Court has clearly stated the parameters for re-calling and cross-examination of the prosecution witnesses. In this case, an opportunity was given to the accused, but the accused did not cross-examine PW1 & PW2 in the year 2011. At the request of the accused, PW1 & PW2 were present before the trial Court on 03.05.2017, but, on that day also, the accused did not cross examine PW1 & PW2.

10. In such view of the matter, this Court does not find any infirmity in the order passed by the trial Court warranting interference. Hence, this petition is dismissed, as being devoid of merits.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The V Metropolitan Magistrate,
Egmore, Chennai.

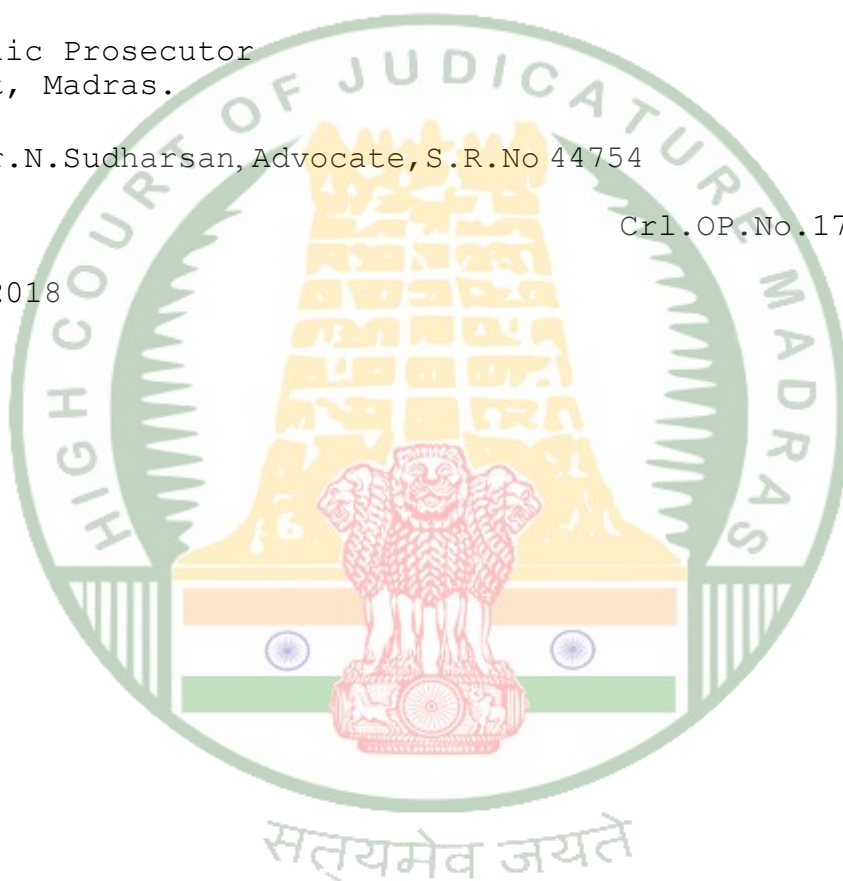
2.The Inspector of Police
K-8, Arumbakkam Police Station
Chennai.

3.The Public Prosecutor
High Court, Madras.

+1cc to Mr.N.Sudharsan, Advocate, S.R.No 44754

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NA (CO)
BM 19/07/2018



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