

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.18662 of 2018
and
Crl.MP.No.9842 of 2018

Ramesh Raj @ Ramesh Varma ... Petitioner

Vs

State Rep. by
The Inspector of Police
C-2 Elephant Gate Police Station
Chennai. ... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order passed by the learned Magistrate dated 17.07.2018 in Crl.MP.No.2194 of 2018 in C.C.No.4002 of 2017 on the file of VIII Metropolitan Magistrate, George Town, Chennai.

For Petitioner : Mr.K.Thenrajan

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 17.07.2018 passed by the VIII Metropolitan Magistrate, George Town, Chennai, in Crl.MP.No.2194 of 2018 in C.C.No.4002 of 2017.

2. The petitioner is facing trial in C.C.No.4002 of 2017 under Sections 338 and 506(i) IPC before the VIII Metropolitan Magistrate, George Town, Chennai. While so, the prosecution examined six witnesses, out of which, most of them have turned hostile. The Sub-Inspector of Police was examined as PW6 on 11.06.2018 and on that day, the petitioner did not cross-examine PW6. Thereafter, the petitioner filed Crl.MP.No.2194 of 2018 in C.C.No.4002 of 2017 under Section 311 Cr.P.C, to recall PW6, which has been dismissed by the trial Court, by the impugned order dated 17.07.2018, challenging which, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondent.

4. The learned counsel for the petitioner submitted that PW6 was examined-in-chief on 11.06.2018 and a petition under Section 311 Cr.P.C. was filed on 13.06.2018 and therefore, one opportunity should be given to the accused to cross-examine PW6.

5. On a reading of the petition filed in CrI.MP.No.2194 of 2018, the petitioner/accused has merely stated that he was unable to cross examine the said witness due to unavoidable circumstances. In Vinod Kumar vs. State of Punjab [2015(1) MLJ (CrI) 288], the Supreme Court has held that the prosecution witnesses should be cross-examined on the day they are examined in chief. Following the said Supreme Court Judgment, the Registrar General of this Court has issued a Circular to all the trial Courts to strictly follow the mandates of the Supreme Court in Vinod Kumar (supra). Had the petitioner been given some good and proper reason in CrI.MP.No.2194 of 2018, this Court would have considered the request of the petitioner to recall PW6. But the petitioner has not given any good reason, except saying that he was unable to cross-examine PW6 due to unavoidable circumstances. Such a reason cannot be countenanced, in the light of the law laid down by the Supreme Court in A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649]. Hence, this petition is dismissed, as being devoid of merits. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. VIII Metropolitan Magistrate,
George Town, Chennai.

2. The Inspector of Police
C-2 Elephant Gate Police Station
Chennai.

3. The Public Prosecutor
High Court, Madras.

+ 1 cc to Mr. K. Thenrajan, Advocate SR.50686

CrI.OP.No.18662 of 2018

(CS-VI)
EU(03/08/2018)