

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.07.2018

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.19026 of 2018
and CMP No.10028 of 2018

Karmegam
Vs

..Petitioner

State rep. by
The Inspector of Police,
Veraiyur Police Station,
Tiruvannamalai District.

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C.,
praying to call for the records and to set aside the order in
Crl.M.P.No.46 of 2018 in C.C.No.8 of 2016 dated 20.03.2018 on
the file of the Chief Judicial Magistrate, Tiruvannamalai.

For Petitioner : Mr.R.Diwakaran
For Respondent : Mr.C.Raghavan, GA

O R D E R

The petitioner is accused in C.C.No.8 of 2016 before the
Chief Judicial Magistrate, Tiruvannamalai for the offences under
Section 279, 338 and 304(A) IPC (6 counts). After charges were
framed, trial began with the examination of PW1 on 30.08.2016
and totally 37 witnesses have been examined. The Petitioner did
not cross examine 20 witnesses. The petitioner filed
Crl.M.P.No.46 of 2018 in C.C.No.8 of 2016 under Section 311
Cr.P.C. seeking to recall the 20 witnesses, which has been
dismissed by the trial Court, by the impugned order dated
20.03.2018. Challenging which, the accused is before this Court.

2.Heard the learned counsel for the petitioner/accused and
learned Government Advocate.

3.Learned counsel for the accused submitted that the
petitioner is facing prosecution for grave offences and that, if
the petitioner is denied the opportunity to cross examine the
witnesses, undue prejudice will be caused to his case.

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

5.This court gave its anxious consideration to the rival submissions. In the petition in CrI.M.P.No.46 of 2018 filed by the accused under Section 311 Cr.P.C., he has not given any reasons whatsoever for recalling the witnesses, who were examined in the year 2016. In A.G. Vs Shiv Kumar Yadav [2015[9] Scale 649], the Hon'ble Supreme Court has given guidelines with regard to exercise of powers under Section 311 Cr.P.C. In Vinodh Kumar Vs State of Punjab [2015[1] MLJ [CrI] 288], the Supreme Court has directed that the prosecution witness should be cross-examined on the day, they are examined in chief. Under such circumstances, this Court does not find any serious infirmity in the order passed by the trial Court dismissing the petition under Section 311 Cr.P.C.

6.However, this Court is of the view that interest of justice will be served, if out of 20 witnesses, the following 5 witnesses are directed to be recalled for cross examination, provided they are available. If any of the witness is away from Tamil Nadu, he cannot be recalled. Subject to the above, the 5 witnesses who are recalled are :

- [1] Athimoolam-PW1,
- [2] Elumalai-PW7,
- [3] Munusamy-PW16,
- [4] Subramani-PW27,
- [5] Mathiyarasan-P.W.37.

The petitioner shall pay Rs.1,000/- as cost to each witness, when they come to Court for giving evidence. On the appearance of the witness, the Assistant Public Prosecutor in charge of the case and the trial Court shall furnish their deposition for them to read and refresh their memory. Only thereafter, they can be subjected to cross-examination. On the day when the witness appears, if the petitioner fails to cross-examine him/her even on account of boycott of courts, the petitioner will forfeit his right to cross-examine the said witness. If the petitioner adopts any dilatory tactics, he can be remanded to custody, in the light of the law laid down by the Supreme Court in State of Uttarpradesh Vs Shambhu Nath Singh [JT 2001[4] SC 319]. If the petitioner absconds, afresh FIR can be registered against him under Section 229A IPC. The trial Court is directed to complete the trial in C.C.No.8 of 2016 within a period of six months from the date of receipt of a copy of this order.

With the above direction, this petition is closed. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Tiruvannamalai.

2.The Inspector of Police,
Veraiyur Police Station,
Tiruvannamalai District.

3.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.R. Diwakaran, Advocate sr 52520.

CRL.O.P.No.19026 of 2018

GMR (CO)
SP (13/08/2018)



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