

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2018

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.19237 of 2018

Poongundran

... Petitioner

Vs.

Maniselvam

... Respondent

Criminal Original Petition has been filed under Section 482 of Cr.P.C to set aside the order passed by the learned Judicial Magistrate No.I, Thiruppur in Crl.MP.No.3321 of 2018 in C.C.No.94 of 2016 dated 27.06.2018 and to permit the petitioner to cross-examine the witness Ravichandran PW2.

For Petitioner : Mr.R.C.Paul Kanagaraj

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 27.06.2018 passed by the Judicial Magistrate No.I, Thiruppur in Crl.MP.No.3321 of 2018 in C.C.No.94 of 2016 and to permit the petitioner to cross-examine the witness Ravichandran PW2.

2. The petitioner is facing a prosecution in C.C.No.94 of 2016 before the Judicial Magistrate No.I, Tiruppur for the offence under Section 420 IPC, on a private complaint filed by the respondent. The complainant examined one Ravichandran as PW2 on 03.04.2018, who was not cross-examined by the accused on the same day. Therefore, the trial Court has noted in the deposition "no cross". While so, the accused filed Crl.MP.No.3321 of 2018 in C.C.No.94 of 2016 under Section 311 Cr.P.C. to re-call PW2, which has been dismissed by the trial Court, by order dated 27.06.2018, challenging which, the accused is before this Court.

3. Heard the learned counsel for the petitioner, who submitted that the name of PW2 was not cited as witness in the memo of evidence filed along with the private complaint and that apart, the learned counsel defending the accused was from Coimbatore and therefore, the accused had failed to cross-examine PW2 on 03.04.2018.

4. It is seen that the accused has filed a hand written petition in a cavalier manner before the trial Court, by merely stating that on account of unavoidable circumstances, he was not able to cross-examine PW2. Only, under such circumstances, the trial Court has dismissed CrI.MP.No.3321 of 2018, which cannot said to be erroneous. However, it is seen that PW2's name does not figure in the list of witnesses appended to the complaint and that apart, PW2 was examined on 03.04.2018 and immediately, a petition under Section 311 Cr.P.C. has been filed. Only on these two grounds, this Court is of the view that the interest of justice will be served, if an opportunity is given to the accused to re-call PW2. This Court is not ordering notice on the complainant, because, this will further prolong the trial and result in disappearance of evidence.

5. Under such circumstances, this Court directs the trial Court to re-call Ravichandran-PW2 and fix the date for cross-examination. The accused shall pay a costs of Rs.2,500/- to PW2, when he appears before the trial Court for giving evidence. On the appearance of PW2, the trial Court shall furnish the deposition to him to read and refresh his memory, before getting into the witness box for the purpose of cross-examination. On the appearance of PW2, the petitioner/accused shall cross-examine him. Boycott of Courts cannot be stated as a reason for not cross-examining the recalled witness. If the accused fails to cross-examine PW2, he will forfeit his right to re-call PW2 again.

With the above directions, this petition is ordered.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mk

To

The Judicial Magistrate No.I,
Thiruppur.

+1cc to Mr.R.C.Paul Kanagaraj, Advocate, S.R.No.52322

CrI.O.P.No.19237 of 2018

KAN (CO)
BM 02/08/2018