

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.19918 of 2018

Elumalai

.. Petitioner

Vs

The State: rep. By Station House Officer,
K.3, Police Station,
Aminjikarai Chennai.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to set aside the order dated 04.07.2018 passed in Crl.M.P.No.2712 of 2018 in C.C.No.1795 of 2010 on the file of V Metropolitan Magistrate, Egmore at Allikulam.

For Petitioner : Mr.A.S.Selvah Raahj

For Respondent : Mr.C.Raghavan
Government Advocate

O R D E R

This Criminal Original Petition has been filed seeking to set aside the order dated 04.07.2018 passed in Crl.M.P.No.2712 of 2018 in C.C.No.1795 of 2010 on the file of the V Metropolitan Magistrate, Egmore at Allikulam.

2.The petitioner/accused is facing trial in C.C. No.1795 of 2010 under Section 291 IPC before the V Metropolitan Magistrate, Egmore, Allikulam.

3. PW1 was examined in chief on 15.06.2011 and the counsel for the petitioner/accused reported 'no cross'. After seven years, the petitioner filed Crl.M.P.No.2712 of 2018 in C.C.No.1795 of 2010 under Section 311 Cr.P.C. to recall PW1, which has been dismissed by the trial Court by the impugned order dated 04.07.2018, challenging which, the petitioner is before this Court.

4. Heard learned counsel for the petitioner and learned Government Advocate (Criminal Side) for the respondent. Mr.K.Gopalakrishnan, Sub Inspector of Police, Aminjikarai P.S. is present.

5. Learned counsel for the petitioner submitted that the petitioner was suffering from viral fever and therefore, he could not cross examine PW1. He also submitted that the Court building was shifted from Egmore to Allikulam and therefore, the petitioner could not effectively prosecute the trial.

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

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

8.It is seen that PW1 was examined in chief on 15.06.2011. If the petitioner had really fallen sick on 15.06.2011, he would have filed an application under Section 311 Cr.P.C. within a week, or within a month or within a year. But, he has filed the petition under Section 311 Cr.P.C. seven years later. Shifting of the Court building from Egmore to Allikulam, cannot be a good reason for recall of PW1. That apart, the trial Court while rejecting the Section 311 Cr.P.C., petition, has relied upon the judgment of the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288] and A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], wherein the parameters for recalling and cross-examination of the prosecution witnesses have been clearly set out.

9.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.

सत्यमेव जयते Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The V Metropolitan Magistrate,
Egmore at Allikulam.

2.The Public Prosecutor,
High Court of Madras, Chennai.

3.The Station House Officer,
K.3 Police Station, Amijikarai, chennai

CrI.O.P.No.19918 of 2018

AK(CO)
GSP(10/09/2018)



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