

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.23073 of 2018

Sulttan Kamaruddin

.. Petitioner

Vs.

State by Inspector of police,
Kodumudi Police Station,
Erode District.
(Crime No.214 of 2014)

... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order of the learned District Munsif - cum - Judicial Magistrate, Kodumudi, Erode District passed in Crl.M.P.No.3226 of 2016 in C.C.No.5 of 2015 dated 03.12.2016 and permit the petitioner here to cross examine PWs 1 to PW9 in the above case in C.C.No.5 of 2015.

For Petitioner : Mr.T.Shanmugam

For Respondent : Mrs.M.Prabhavathi, APP

O R D E R

The petitioner is facing prosecution in C.C.No.5 of 2015 for the offences under Section 277 and 304A IPC. The prosecution examined nine witnesses and the accused did not choose to cross-examine the witnesses. The accused filed Crl.M.P.No.3226 of 2016 in C.C.No.5 of 2015 to recall the said witnesses, which was dismissed by the trial Court, by order dated 03.12.2016. Challenging which, the petitioner/accused is before this Court in September 2018.

2.Mr.Shanmugam, learned counsel for the accused submitted that the accused may be given one opportunity to cross-examine the said witnesses and this Court may even impose cost.

3.Learned Additional Public Prosecutor refuted the contentions.

4.On a reading of the petition in C.M.P.No.3226 of 2016, that was filed by the accused before the trial Court under Section 311 Cr.P.C, the accused has merely stated that his counsel was engaged in antoher Court and therefore, he was not able to cross-examine the witnesses. Proviso to Section 309 Cr.P.C. reads as follows :

"[b] the fact that the Pleader of a party is engaged in any other Court, shall not be a ground for adjournment."

5. In A.G. Vs Shiv Kumar Yadav [2015[9] Scale 649], the Supreme Court has laid down the parameters for the exercise of powers under Section 311 Cr.P.C. From the trial Court records, it seems that PW1 to PW7 was examined on 17.11.2015, PW8 was examined on 15.12.2015 and PW9 was examined on 21.01.2016. The present petition to recall has been filed on 03.12.2016 and the same was dismissed by the trial Court on 03.12.2016. The accused has chosen to file the present petition to set aside the order dated 03.12.2016 only on 24.09.2018. On the ground of laches, the petition deserves to be dismissed. That apart, the accused has not given any good reason before the trial Court for recalling PW1 to PW9.

6. Hence this Court does not find any infirmity in the order passed by the trial Court warranting interference. However, this Court is of the view that one more opportunity could be given to the accused to cross-examine PW1 and PW9, provided they are available in the address given in the memo of evidence. If they are not available and that if they had gone out of the district for employment or otherwise, they need not be recalled. The trial Court shall first confirm about very availability and thereafter, fix a date for recalling them. On their appearance, the accused shall pay cost of Rs.1,000/- each to PW1 and PW9.

7. The Assistant Public Prosecutor, incharge of the case and the trial Court shall furnish the deposition in-chief to PW1 and PW9 for them to refresh their memory. Only thereafter, they can be subjected to cross-examination. On the appearance of the witnesses, if the accused fails to cross-examine them, even on account of boycott of Courts, the accused will forfeit his right to recall them. It is not known whether the accused had filed any Criminal Revision Petition either before the Sessions Court or before the High Court or a petition under Section 482 Cr.P.C, challenging the order dated 03.12.2016. If the petitioner had already filed any such petition, it will not be necessary for the trial Court to recall PW1 and PW9.

With the above direction, this petition is ordered accordingly.

dua/gya

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

To

1. The District Munsif cum Judicial Magistrate, Kodumudi.
2. -do- thro The Chief Judicial Magistrate, Erode District.
3. The Inspector of Police, Kodumudi Police Station, Erode District.

4. The Public Prosecutor, High Court, Madras.

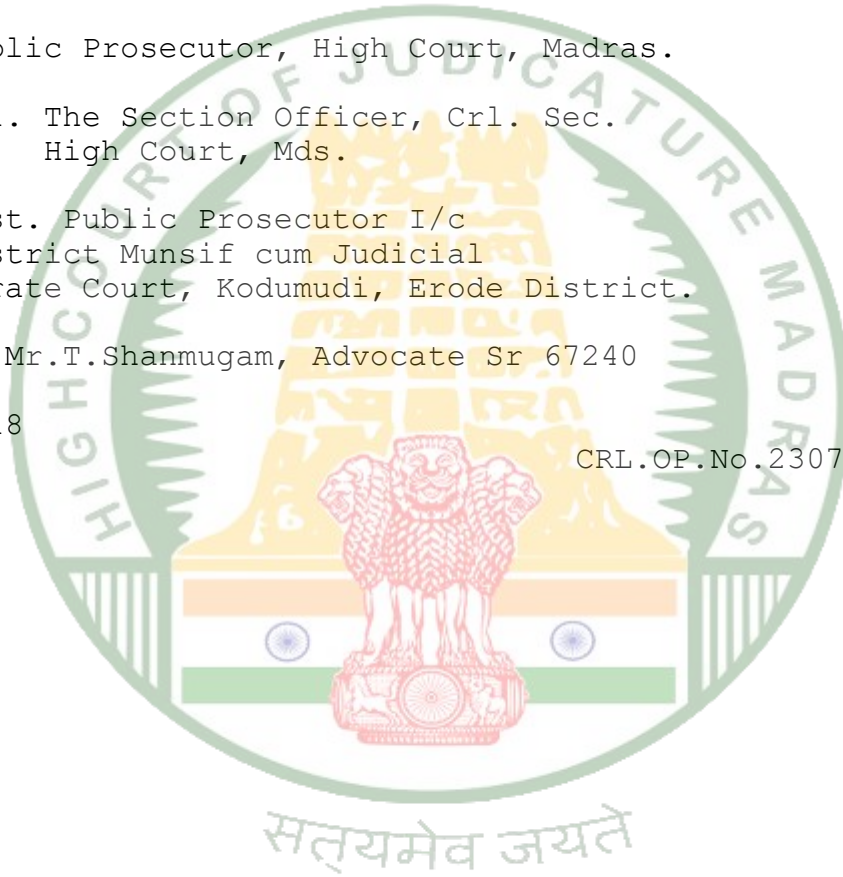
COPY TO:-1. The Section Officer, Crl. Sec.
High Court, Mds.

2. The Asst. Public Prosecutor I/c
The District Munsif cum Judicial
Magistrate Court, Kodumudi, Erode District.

+ 1 cc to Mr.T.Shanmugam, Advocate Sr 67240

KR/11/10/18

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