

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.23406 of 2018

and

Crl.M.P.No.13093 of 2018

Neelankandan

.. Petitioner

Vs.

State rep. by

The Inspector of Police,

Mannargudi Town Police Station,

Thiruvarur District.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 03.07.2018 passed by the learned Judicial Magistrate No.I, Mannargudi, Thiruvarur District in Crl.M.P.No.4199 of 2018 in C.C.No.455 of 2012.

For Petitioner : Mr.Swami Subramanian

For Respondent : Ms.M.Prabhavathi

Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 03.07.2018 passed by the Judicial Magistrate No.I, Mannargudi, Thiruvarur District in Crl.M.P.No.4199 of 2018 in C.C.No.455 of 2012.

2. The petitioner is facing prosecution in C.C.No.455 of 2012 for the offence under Section 304-A IPC. Trial began with examination in chief of prosecution-side witness Balamurugan (P.W.1) on 02.04.2014. The petitioner did not choose to cross-examine PW1 for the reasons best known to him. Thereafter, the prosecution examined Rajesh (P.W.2) and Senthamarai (P.W.3). While so, the petitioner filed Crl.M.P.No.4199 of 2018 in C.C.No.455 of 2012 to recall P.W.1, which was dismissed by the trial Court on 03.07.2018, challenging which, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor, appearing for the respondent police.

4. The learned counsel for the petitioner submitted that the petitioner is facing prosecution for the offence under

Section 304-A IPC and that he had cross-examined P.W.2 and P.W.3, but had failed to cross-examine P.W.1, who is an eye-witness, and therefore, pleaded that an opportunity may be given to the accused/petitioner to recall P.W.1.

5. Per contra, the learned Additional Public Prosecutor refuted the contentions.

6. The trial Court has relied upon the judgment of the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288] and has dismissed the petition in Cr1.M.P.No.4199 of 2018 in C.C.No.455 of 2012. Though the order passed by the trial Court cannot be said to be improper, yet, this Court is of the view that the interests of justice would be served, if one more opportunity is given to the petitioner to cross-examine P.W.1, provided, P.W.1 is alive and available in the village. If P.W.1 has gone out of the district on employment, he need not be recalled.

7. Today, Mr.S.Saravanan, Special Sub Inspector of Police, Mannargudi Town Police Station, Thiruvarur, is present before this Court.

8. On instructions, learned Additional Public Prosecutor submitted that P.W.1 is available in the village.

9. In such view of the matter, the trial Court is directed to fix a date and recall P.W.1. On the appearance of P.W.1, he shall be paid costs of Rs.3,000/- by the accused/petitioner. The learned Public Prosecutor, in charge of the case in the trial Court, shall permit P.W.1 to read his evidence adduced during examination in chief for refreshing his memory and only thereafter, he can be subjected to cross-examination. If P.W.1 had been won over by the accused, the trial Court can proceed to decide the case based on the examination in chief. Boycott of Court shall not be a reason for not cross-examining P.W.1 on the date of his appearance.

This Criminal Original Petition is ordered with the above directions. Consequently, connected miscellaneous petition is closed.

Mkn

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

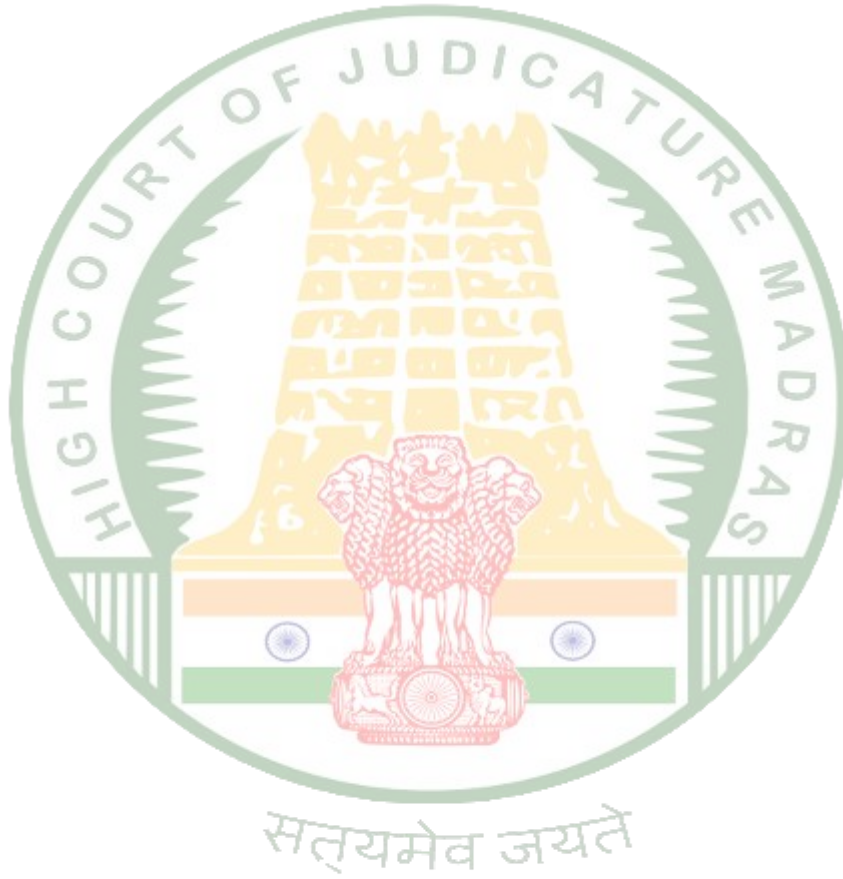
1. The Inspector of Police,
Mannargudi Town Police Station,
Thiruvarur District.

2. The Public Prosecutor, High Court, Madras.

+lcc to Mr.Swami Subramanian, Advocate S.R.No.68189

KR/26/10/18

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