

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.25544 of 2018

1.I.Babu
2.B.Shahira

.. Petitioners

Vs

The Inspector of Police,
K-9, Thiru Vi Ka Police Station,
Thiruvika Nagar,
Chennai.

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C.,
praying to set aside the order in Crl.M.P.No.4352 of 2018 in
C.C.No.52 of 2015 dated 24.09.2018 passed by the learned V
Metropolitan Magistrate, Chennai direct to allow to recall and
cross examine the witnesses.

For Petitioners : Mr.D.Chandrakanth

For Respondent : Ms.M.Prabhavathi,
Additional Public Prosecutor

O R D E R

The petitioners are accused in C.C.No.52 of 2015 for the
offence under Sections 341, 294(b) and 323 IPC on the file of
the V Metropolitan Magistrate, Egmore, Chennai. The prosecution
examined 7 witnesses and they were not cross-examined by the
accused. Thereafter, the accused filed Crl.M.P.No.4352 of 2018
in C.C.No.52 of 2015 under Section 311 Cr.P.C and the same has
been dismissed by the Trial Court on 24.09.2018, challenging
which the accused is before this Court.

2.Heard the learned counsel for the accused who submitted
that the accused is the close relatives of the de facto
complainant and since there was compromise talks, the accused
did not chose to cross-examine the de facto complainant, but now
the compromise talks have failed and therefore, the witnesses
are sought to be recalled.

3.Per contra, the learned Additional Public Prosecutor refuted the contentions of the counsel for the accused.

4.In the petition in Crl.M.P.No.4352 of 2018 filed by the accused under Section 311 Cr.P.C, the accused has merely stated that the witnesses were not cross-examined for unavoidable circumstances. Beyond that, the accused has not given any acceptable reasons for exercising the power under Section 311 Cr.P.C. That apart, it is seen that P.W.1 and P.W.2 were examined on 20.11.2017; P.W.3 was examined on 08.01.2018; P.W.4 and P.W.5 were examined on 14.05.2018; P.W.6 was examined on 19.07.2018 and P.W.7 was examined on 06.08.2018. On all these dates, the accused did not cross-examine any witnesses. The Trial Court has relied upon the judgment of the Hon'ble Supreme Court in Vinoth Kumar Vs. State of Punjab [2015 (1) MLJ (Crl) 288] and A.G Vs. Shiv Kumar Yadav and another [2015 9 Scale 649], wherein the Hon'ble Supreme Court has clearly held that the witnesses should be cross-examined on the day they are examined in chief and application under Section 311 Cr.P.C cannot be allowed without sufficient grounds.

Under such circumstances, this Court does not find any infirmity in the order passed by the Trial Court warranting interference and the petition is dismissed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Inspector of Police,
K-9, Thiru Vi Ka Police Station,
Thiruvika Nagar,
Chennai.

2.The V Metropolitan Magistrate,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

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CSL/20.11.2018