

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.29433 of 2018

Kajamoideen

...Petitioner

Vs.

State Rep. by

Inspector of Police,

K-Anna Nagar Police Station,

Chennai.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records and set aside the order dated 14.08.2018 passed by the learned Principal Session Judge at Chennai in Crl.R.C.No.19 of 2018 on the file of the order passed in Crl.M.P.No.861 of 2018 in C.C.No.7111 of 2018 dated 04.04.2018.

For Petitioner :Mr.M.Anandaraj

For Respondent :Mr.M.Mohamed Riyaz,

Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed against the dismissal of the application under Section 311 of Cr.P.C. to recall and cross examine PW.1 and PW.3.

2. The petitioner is facing trial before the Court below for an alleged offence under Sections 341, 342, 323, 385, 506(i) IPC. The petitioner has been added as A2.

3. It is seen from the records that PW.1 was examined on 19.08.2008. PW.2 was examined on 27.01.2009. PW.3 was examined on 15.11.2017. Thereafter, the petition to recall PW.1 and PW.3 was filed on 06.12.2017.

4. The Court below had dismissed the petition on the ground that the petitioner has chosen to file a petition to recall PW.1 and PW.2 after nearly ten years. That apart, the Court below has also found that the petitioner failed to cross-examine PW.3, when he was examined in chief on 15.11.2017. The Court relying upon the Judgment of the Hon'ble Supreme Court in Vinoth Kumar Vs State of Punjab 2015(3) SCC 220, and A.G. Vs Shiv Kumar Yadav and another 2015 9 Scale 649, held that the petition cannot be

entertained and the same has been filed only with an intention to drag on with the proceedings.

5. This Court does not find any illegality and infirmity in the order passed by the Court below. The question of recalling PW.1 and PW.2 is totally ruled out, since they were examined nearly ten years before the petition came to be filed.

6. The learned counsel for the petitioner would submit that this Court can consider permitting the petitioner to cross examine at least PW.3, who was examined in chief on 15.11.2017 and the petition to recall was filed on 06.12.2017.

7. In view of the serious charges faced by the petitioner, this Court is of the considered view that one last opportunity can given to the petitioner to recall and cross examine PW.3 only.

8. The order of the Court below made in Crl.M.P.861 of 2018 is partly set aside insofar as PW.3 is concerned. The Court below is directed to issue summon to PW.3. The learned counsel for the petitioner has to cross examine PW.3 on the same day he appears before the Court below. The Court below is also directed to permit PW.3 to go through the deposition in order to recall the facts and only thereafter put PW.3 in the witnesses box. If for any reason the petitioner fails to cross examine PW.3. on the day he is present in the Court, the petitioner shall forfeit his right to recall PW.3 in future. The petitioner shall pay a cost of Rs.1,000/- to PW.3 on the day when he appears before the Court below.

9. In the result, this Criminal Original Petition is partly allowed to the extent indicated herein above. The Court below is directed to complete the proceedings in C.C.No.7111 of 2018, within a period of three months from the date of receipt of copy of this order.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

lpp/vsa
To

1.The Principal Session Judge,
Chennai.

2.The Inspector of Police,
K-Anna Nagar Police Station,
Chennai.

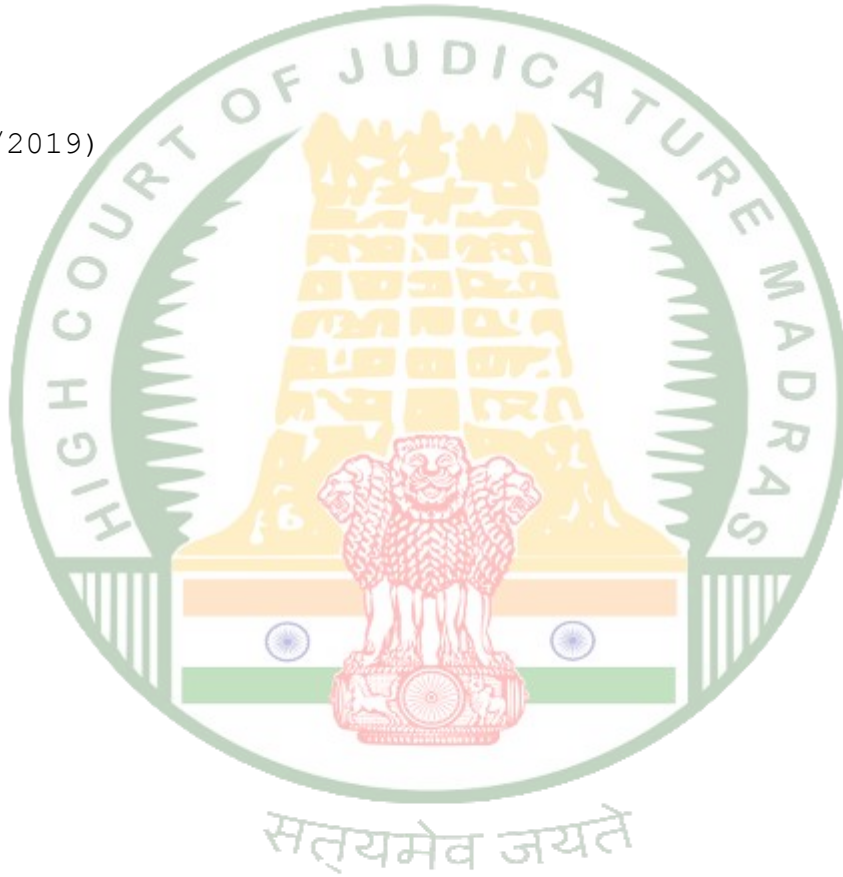
3. The V Metropolitan Magistrate
Egmore, Chennai.

4.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.M.Anandaraj, Advocate sr 87337.

Cr1.O.P.No.29433 of 2018

GJ(CO)
SP(09/01/2019)



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