

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.27906 of 2018

and

CrI.M.P.No.16171 of 2018

Boopathy @ Manikandan

... Petitioner/Accused

Vs.

The State Rep by
The Sub Inspector of Police,
Velagoundmpatty Police Station,
Velagoundampatty,
Namakkal District.

... Respondent/Complainant

PRAYER : This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.M.P. No.317 of 2018 in S.C. No.18 of 2016 order dated 20.07.2018 on the file of the learned Mahila Judge, Namakkal and to set aside the same.

For Petitioner : Mr.K.T.S.Sivakumar

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed against the dismissal of the petition filed by the petitioner under Section 311 of Cr.P.C.

2.This petitioner is added as A1 in the final report and he is facing trial along with A2 for an offence under Section 326 (A) of I.P.C.

3.The case of the prosecution is that the accused persons had developed enmity with the Nurse working in Primary Health Centre and in order to wreck vengeance, had thrown acid on the victim and had caused grievous injurious on the face, neck and chest of the victim. The further case of the prosecution is that one other victim also sustained injurious on his back.

4.The prosecution had examined 19 witnesses in order substantiate the case. At this stage, the petitioner filed a

petition to recall P.W.1 and P.W.2 in order to mark a document, which has not been produced by the prosecution.

5.The Court below dismissed the petition on the ground that the petitioner has already cross-examined P.W.1 and P.W.2 and the petitioner cannot compel the prosecution to produce the documents irrelevant to the case and the petitioner has to only rely upon the materials that have already been placed on record by the prosecution. The Court below has also dismissed the petition on the ground that the petitioner is attempting to protract the proceedings.

6.The learned counsel for the petitioner would submit that the documents sought to be marked by the petitioner is a vital piece of evidence which is required in order to sustain the defence. The learned counsel would further submit that even if the prosecution does not produce the document, the accused will always have the right to mark any document, relating to the case and denying such opportunity will adversely affect the right of the accused and the same will amount to denying a fair trial to the accused persons.

7.The learned Additional Public Prosecutor would submit that the petitioner has already cross examined P.W.1 and P.W.2 and therefore, there is no requirement to recall them again. He would further submit that if at all the petitioner wants to rely upon any document, he can always summon the same during the defence side evidence and establish his case. Therefore, the learned Additional Public Prosecutor would submit that there is no ground to interfere with the order passed by the Court below.

8.This Court has carefully considered the submissions made on either side. The purpose for which the petition to recall was filed was to mark certain relevant records regarding the death of the child of the petitioner. According to the learned counsel for the petitioner, it is a vital document which will strengthen the defence that has been taken by the accused in this case.

9.This Court is of the considered view that in order to mark the documents, it is not necessary to recall and cross-examine P.W.1 and P.W.2 since P.W.1 and P.W.2 have already been cross-examined by the petitioner.

10.If the petitioner feels that the marking of the documents is essential in order to substantiate the defence taken by the petitioner, the petitioner can always summon the relevant documents at the time of the defence evidence. If after summoning the document, any question will have to be put on the said document from any of the witnesses examined by the prosecution, at that point of time, the petitioner can always

file a petition to recall the concerned witness in order to cross-examine on the documents that has been marked on the side of the defence. That stage has not arisen in this case.

11.This Court does not find any illegality or infirmity in the order passed by the Court below. This Criminal Original Petition is disposed of by giving liberty to the petitioner to summon the relevant documents at the time of his defence evidence and thereafter work out his remedy in the manner indicated in this order.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ia/vsg1

To:

1. The Mahila Judge (Fast Track), Namakkal
- 2.The Sub Inspector of Police,
Velagoundmpatty Police Station,
Velagoundampatty,
Namakkal District.
- 3.The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

+1cc to Mr.KTS.Sivakumar, Advocate SR.No.82136

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KJ(CO)
GMY(20/12/2018)

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