

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.12.2018

CORAM
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.28869 of 2018
and Crl.M.P.No.577 of 2018
in
S.C.No.132 of 2017

Sakthivel ...Petitioner / Petitioner/Accused 1

-Vs-

The State Rep. by its
The Inspector of Police,
Erumpatti Police Station,
Namakkal District,
(Crime No.18 of 2015) ... Respondent/Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 05.10.2018 made in Crl.MP No.577 of 2018 in S.C.No.132 of 2017 on the file of Sessions (Fast Track Mahila) Judge, Namakkal.

For Petitioners: Mr.W.Camyles Gandhi

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

ORDER

This criminal original petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioners under Section 311 of Cr.PC to recall PW1 for further cross examination.

2. The petitioner is facing trial before the Court below for an offense under Section 147, 366, 366 r/w 109 of IPC. The prosecution had examined 7 witnesses in this case. At this stage, the petitioner has filed a petition under Section 311 of Cr.PC seeking to recall PW1 for further cross examination. In the petition, the only reason that has been assigned to recall PW1 was to put certain questions to PW1 with regard to the scene of occurrence, where the alleged occurrence is said to have been taken place.

3. The Court below has dismissed the petition on the ground that the counsel representing the petitioners have already cross examined PW1 and therefore, there was no requirement to further cross-examination PW1. The Court below also took into consideration the long pendency of the case and therefore, thought it fit to dismiss the petition.

4. The learned counsel for the petitioner would submit that the petitioner is facing charges for serious offense and it is very vital for the petitioners to put all the relevant questions to PW1. Therefore, the learned counsel appearing for the petitioner would submit that one last opportunity can be given to the petitioner to recall and cross-examine PW1.

5. The learned Additional Public Prosecutor would submit that the petitioner has already sufficiently examined PW1 and there is no requirement to recall PW1. The learned Counsel would further submit that the petition has been filed only to protract the proceedings.

6. This Court has carefully considered the submissions made on either side and also the order passed by the Court below.

7. It is seen from the records that the petitioner has cross-examined all the witnesses in this case. The petitioner has also cross-examined PW1 on 06.07.2018. The petitioner wants to further cross examine PW1 on the ground that certain questions about the scene of occurrence will have to be put to the witness.

8. Considering the fact that the prosecution has completed examining all the witnesses and there is no undue delay on the part of the petitioner in filing the petition to recall PW1, this Court is of the considered view that one last opportunity can be given to the petitioner to recall PW1 for further cross-examination.

9. In view of the above, the order passed by the Court below in CrI.MP.No.577 of 2018 dated 05.10.2018 is hereby set aside. The Court below is directed to issue summons to PW1. On the day, when PW1 appears before the Court, the Court below shall permit PW1 to go through the deposition already given before the Court in order to enable PW1 to recollect the facts stated before the Court below. Thereafter, the learned counsel for the petitioner will have to cross-examine PW1 on the same day. If for any reason, the petitioner fails to cross-examine PW1, the petitioner shall forfeit his right to cross-examine PW1 in future. The petitioner shall pay a sum of Rs.1,000/- (Rupees thousand only) to PW1, when PW1 appears to give evidence.

10. Accordingly, this criminal original petition is allowed. The Court below is directed to complete the proceedings in SC No.132 of 2017 within a period of three months from the date of receipt of copy of this order.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

rka/ssr

To

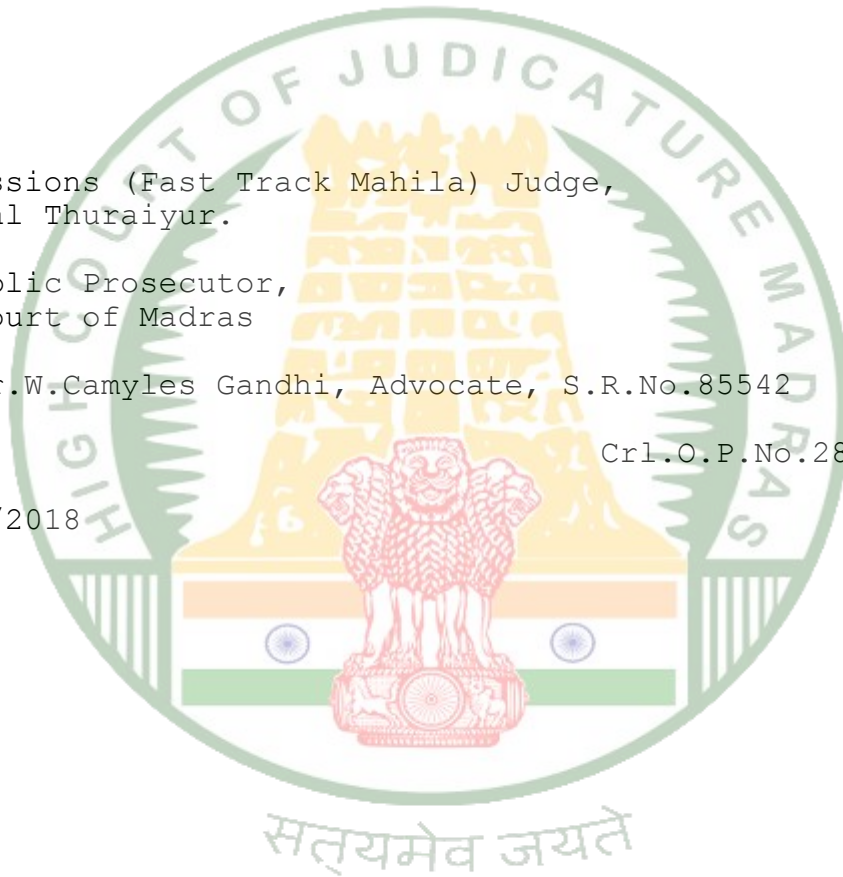
1. The Sessions (Fast Track Mahila) Judge,
Namakkal Thuraiyur.

2. The Public Prosecutor,
High Court of Madras

+1cc to Mr.W.Camyles Gandhi, Advocate, S.R.No.85542

CrI.O.P.No.28869 of 2018

rrs 14/12/2018



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