

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.12.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.29465 of 2018
and
CrI.M.P.No.17310 of 2018

C.Ramasamy @ Chinnappan

... Petitioner

Vs.

State by Inspector of Police,
Moolanur Police Station,
Dharapuram.
(Crime No.393/2017)

... Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 05.12.2018 passed in C.M.P.No.1898 of 2018 in Spl.S.C.No.10 of 2018 on the file of Principal Sessions Judge, Tiruppur and allow recall petition.

For Petitioner : Mr.J.Franklin

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

ORDER

The Criminal Original Petition has been filed against the order passed by the Court below dismissing the application filed by the petitioner under Section 311 of Cr.P.C., to recall and cross examine PW1 to PW3, PW5 to PW7, PW10 and PW11.

2. The petitioner is facing trial before the Court below for offences under Sections 342, 323, 324, 355, 506(2) of I.P.C and Section 3(1)(r), 3(1)(s), 3(2) (va) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 and Section 75 of Juvenile

Justice Act, 2015.

3. The prosecution had examined PW1 to PW11 on 19.01.2018. On that day, the Counsel for the petitioner had cross examined only PW7, PW8, PW9 and other witnesses are not cross examined. Therefore, the Court below proceeded further to close the prosecution side evidence and posted the case for questioning under Section 313 of Cr.P.C. The 313 Cr.P.C., questioning was also completed and the case was thereafter posted for defence evidence on 27.11.2018.

4. In the mean time, the petitioner had filed a petition under section 311 of Cr.P.C., seeking to recall the witnesses for cross examination. The Court below dismissed the petition on the ground that the counsel for the petitioner ought to have cross examined the witnesses on the same day, when they were examined in chief.

5. The learned counsel for the petitioner would submit that the petitioner is facing charges for serious offence and one last opportunity may be given to the petitioner for cross examination of witnesses. The learned Counsel also submitted that the petitioner did not delay the trial and the petition to recall and cross examine the witnesses was filed immediately within a very short time.

6. In the facts and circumstances of this case, this Court is of the considered view that one last opportunity can be given to the petitioner to recall and cross examine the witnesses. The examination in chief itself was completed only on 19.11.2018 and the petitioner did not cross examine some of the witnesses. Therefore, the Court below has proceeded to close the evidence on the side of the prosecution. The petitioner had filed the petition to recall the witnesses for cross examination on 22.11.2018 itself.

7. The order passed by the Court below in C.M.P.No.1898 of 2018, dated 05.12.2018 is hereby set aside. The Court below is directed to issue summons to PW1 to PW3, PW5 to PW7, PW10 and PW11.

8. The counsel for the petitioner shall cross examine these witnesses on the very same day when they appear before the Court. If for any reason, the counsel for the petitioner fails to cross examine the witnesses, the petitioner shall forfeit his right to recall these witnesses in future.

9. The Criminal Original Petition is allowed, the Court

below is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

arb/ub

To

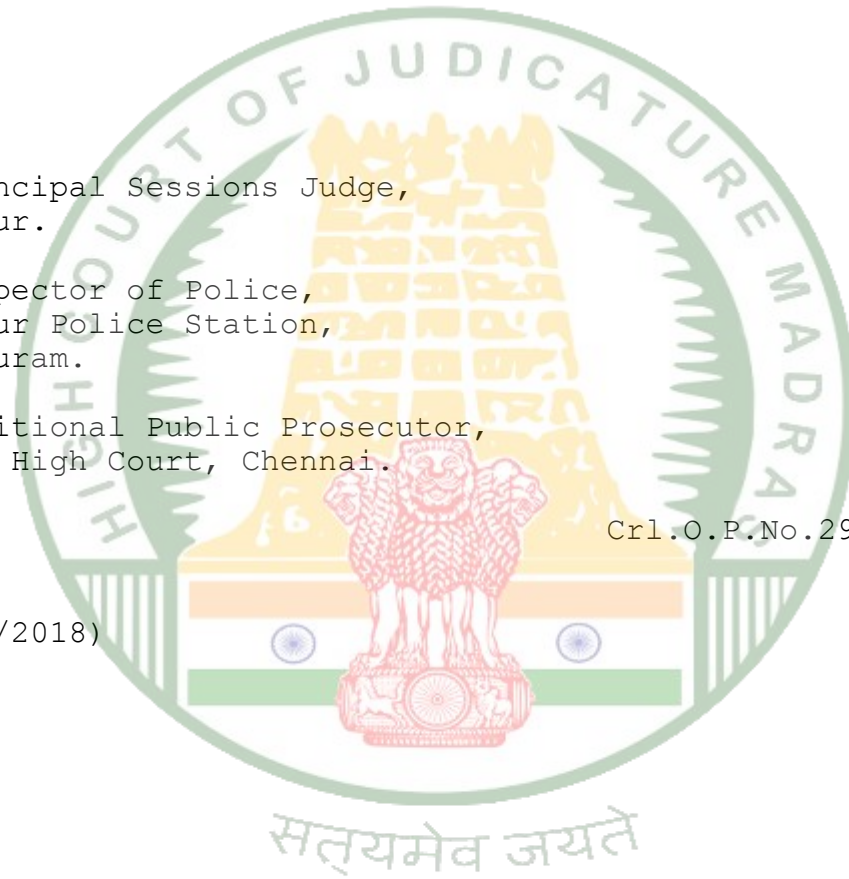
1.The Principal Sessions Judge,
Tiruppur.

2.The Inspector of Police,
Moolanur Police Station,
Dharapuram.

3.The Additional Public Prosecutor,
Madras High Court, Chennai.

Crl.O.P.No.29465 of 2018

GMV (20/12/2018)



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