

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2018

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

CrI.O.P.No.30006 of 2018

Nathmal Jain

... Petitioner/1st Accused

Vs.

State rep by

The Inspector of Police,
Team-II, Central Crime Branch,
Egmore, Chennai-600 008.

...Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 20.11.2018 passed in CrI.M.P.No.1570 of 2018 in C.C.No.6498 of 2016 on the file of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai - 600 008.

For Petitioner : M/S.Ramesh Kumar Chopra

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

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 of Cr.P.C to recall PW.4 for the purpose of cross examination.

2.It is seen from the records that the FIR was registered in the year 1997 and a final report was filed in the year 2001. 13 witnesses were examined on the side of the prosecution on different dates and none of them was cross examined immediately. Thereafter, all of them were recalled and cross examined after several years. The questioning was also completed under Section 313 of Cr.P.C. on 23.01.2014. Thereafter, the prosecution had filed a petition under Section 311 of Cr.P.C. to recall PW.4 for further examination in Chief. This happened on 11.07.2016, in spite of several opportunities given to the petitioner to cross examine PW.4, the petitioner did not cross examine PW4. Therefore, further cross was closed and the case was posted for final hearing. At this stage, a petition came to be filed by

the petitioner in March 2018 seeking for recall and cross examination of PW.2, PW.4, PW.5, PW.9, PW.10 and PW.11.

3.The learned counsel for the petitioner would submit that the prosecution had recalled PW.4 and had marked a register and therefore, PW.4 has to be necessarily cross examined by this petitioner. That apart in connection with the said document, the other witnesses namely, PW.2, PW.4, PW.5, PW.9 to PW.11 must also be recalled and further cross examined. One last opportunity must be given to the petitioner for the recall and cross examination of the witnesses.

4.This Court does not find any illegality or infirmity in the order passed by the Court below. In this case, already 21 years have lapsed, since the FIR was registered. The Court below already gave one opportunity to the petitioner to recall and cross examine PW.1 to PW.13. Thereafter, when the prosecution recalled PW.4 for further cross examination in Chief on 11.07.2016, these petitioners ought to have cross examined PW.4 immediately. The petitioners chose not to cross examine PW.4 for a very long time and the Court below left with no other option closed the evidence and posted the case for arguments. There is absolutely no reason as to why the petitioner waited till March 2018 to file a petition to recall the witnesses. The Court below has given cogent reasons for dismissing the petition filed by the petitioner and this Court is in complete agreement with the reasons given by the Court below. The entire attempt of the petitioner seems to be to drag on the proceedings and keep the case alive for eternity. This attitude of the petitioner goes against the principles laid down by the Hon'ble Supreme Court in the case of Vinoth Kumar vs. State of Punjab reported in 2015 3 SCC 220.

5. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings within a period of 3 months from the date of receipt of a copy of this order.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

rpl/gsp
To

1.The CCB & CBCID Metropolitan Magistrate,
Egmore, Chennai - 600 008.

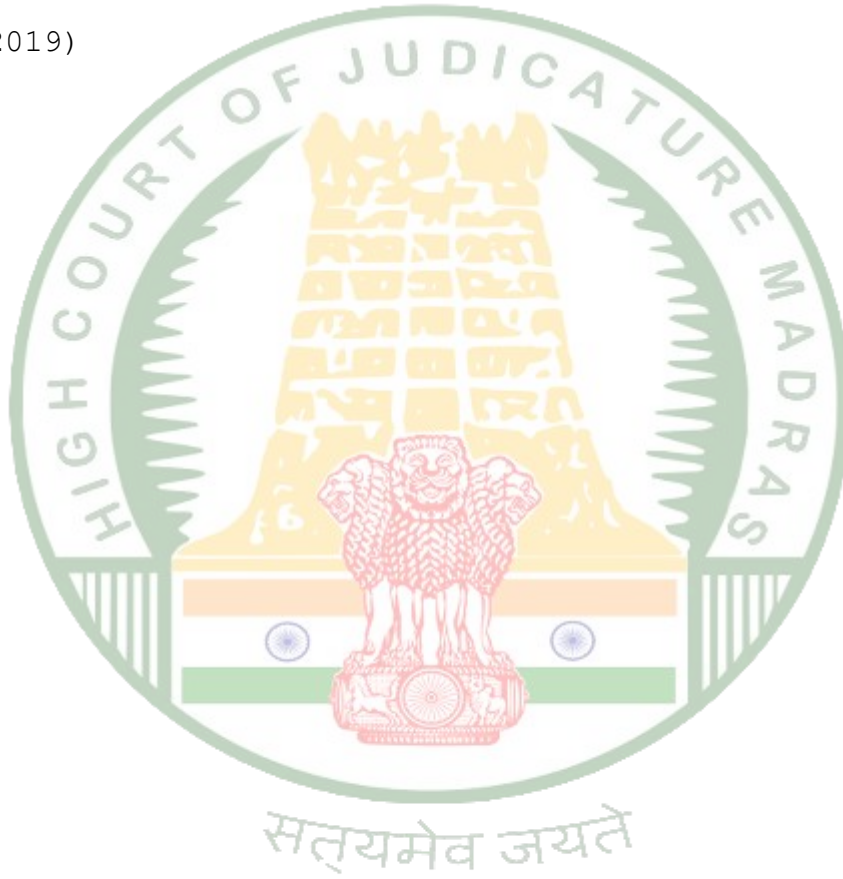
2.The Inspector of Police,
Team-II, Central Crime Branch,
Egmore, Chennai-600 008.

3.The Public Prosecutor,
High Court of Madras.

+2 CCS to Mr.M.Aravind Kumar, Advocate sr 89393

CrI.O.P.No.30006 of 2018

SP(23/01/2019)



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