



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P.(MD).No.18550 of 2018 and

CrI.M.P.(MD)No.8304 of 2018

Paulthurai

...Petitioner

Vs.

Rugmani

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to set aside the order dated 03.09.2018 passed in C.M.P.No.3803 of 2018 in C.C.No.69 of 2018 on the file of the Judicial Magistrate Court No.1, Padmanabhapuram, Kanyakumari District.

For Petitioner :Mr.N.Sivakumar
for R.Murugan

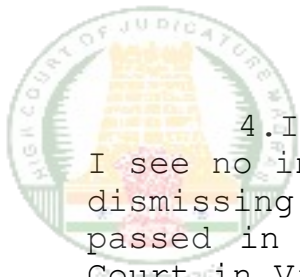
For Respondent :Mr.S.Jeyakumar

O R D E R

This criminal original petition has been filed to set aside the order dated 03.09.2018 passed in C.M.P.No.3803 of 2018 in C.C.No.69 of 2018 on the file of the Judicial Magistrate Court No.1, Padmanabhapuram, Kanyakumari District, dismissing the petition to recall the respondent / complainant for cross examination.

2.The learned counsel for the petitioner would submit that the complainant in this case was examined as P.W.1 on 25.07.2018 and Ex.P1 to Ex.P4 were marked. Thereafter, at the request of the accused / petitioner, the case was posted for cross examination on 10.08.2018. On that day, there was a Court Boycott and the case was again posted on 18.08.2018 at request of the petitioner. On that day also, the accused has sought time stating that he was not ready for cross examination and thereby, the evidence of P.W.1 was closed. Hence, the petitioner had filed a petition under Section 311 Cr.P.C., to recall P.W.1.

3.The learned counsel for the petitioner would submit that P.W.1 is a necessary witness and cross examination of the witness is necessary for arriving at a just decision. He would submit that only on one occasion the petitioner was not ready, whereas the Court blow has closed the evidence without affording an opportunity. He would further submit that the trial Court ought to have given a chance to him.



4.I have gone through the order passed by the trial Judge. I see no infirmity or error in the order passed by the learned Judge dismissing the petition to recall the witness. The order has been passed in consonance with the judgment passed by the Hon'ble Apex Court in Vinod Kumar Vs.State of Punjab.

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5.However, this Court is of the opinion that if P.W.1 is not cross examined, it would be a case of no defence, which would result in a second round of litigation. Therefore, this Court is of the opinion that this petition may be allowed on imposition of costs. This Court after discussing with both the parties, suggests that one chance may be given to the petitioner / accused to cross examine P.W.1.

6.The learned counsel for the respondent has agreed that the complainant / respondent will be available for cross examination on 16.11.2018 and the learned counsel for the petitioner would also submit that the respondent / complainant will be cross examined on the same date without delay. Hence, this petition is allowed with cost of Rs.5,000/- out of which, Rs.3,000/- shall be paid to the Legal Aid Services Authority attached to this Bench and Rs.2,000/- shall be paid to the complainant on the date of appearance of P.W.1 for cross examination.

7.The learned Judicial Magistrate, Padmanabhapuram shall permit the petitioner / accused to cross examine P.W.1 on 16.11.2018 on payment of costs of Rs.2,000/- to the respondent / complainant. The trial Judge shall also complete the trial proceedings as expeditiously as possible preferably within a period of two months from 16.11.2018. Consequently, connected miscellaneous petition is also closed.

Sd/

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar(CS-III)

TO

The Judicial Magistrate Court No.1, Padmanabhapuram,
Kanyakumari District.

Copy to:

The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.MURUGAN, Advocate, SR.No.94822

+1cc to Mr.S.JAYAKUMAR, Advocate, SR.No.94930

Cr1.O.P. (MD) .No.18550 of 2018
12.11.2018

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