



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.10.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl OP(MD)No.10291 of 2017

Mahendran

... Petitioner

Vs.

The Inspector of Police,
Vachakarapatti Police Station,
Vachakarapatti,
Virudhunagar District.
[Crime No.236 of 2013]

...Respondent

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed by the learned Judicial Magistrate No.I, Virudhunagar in CC.No.76 of 2014 dated 11.03.2015.

For Petitioner	: Mr.R.Pon Karthikeyan
For Respondent	: Mr.S.Suyambulinga Bharathi, Government Advocate (Crl Side)

ORDER

This petition has been field challenging the order passed by the Court below, dismissed the application filed by the petitioner to recall PW.1 and to cross examine them.

2.The learned Counsel for the petitioner would submit that the petitioner is facing trial before the Court below for the offence under Section 304 A of IPC. Totally 14 witnesses were examined on the side of prosecution and the petitioner has cross examined all the witnesses except PW.1. When the petitioner filed a petition for recalling PW.1, in order to cross examine him, the Court below has dismissed the said petition by an order dated 11.03.2015 and the learned Counsel for the petitioner seeks one last chance to recall and cross examine PW.1, since petitioner is facing a serious offence under Section 304A of IPC.

3.The learned Government Advocate would submit that the prosecution has completed the examination of the witnesses and the case is at the stage of 313 questioning.

4.This Court is of the considered view that one last opportunity can be given to the petitioner in order to recall and cross examine PW.1. The order of the Court below in CC No.76 of 2014 dated 11.03.2015 is hereby set aside and the petitioner is permitted to recall and cross examine PW.1.



5.The trial Court shall ensure the availability of the witness before issuing process. The trial Court shall fix a date for appearance of the witness before putting the witness in witness box. The witness shall be furnished with deposition, so that they can refresh their memory and only thereafter they can be subjected to cross examination. On the day, when the witnesses appear, if the petitioner fails to cross examine them even on account of Boycott of Courts, the petitioner will forfeit their rights to recall them again.

6.The petitioner shall pay the cost of Rs.1,500/-, to each of the witnesses, when they come for giving evidence. If any other witness is examined on the side of the prosecution, the petitioner shall cross examine those witnesses also on the very same day when they are examined in chief and the trial Court shall ensure that the directions issued by the Hon'ble Supreme Court of India in Vinod Kumar Vs State of Punjab, reported in 2015 (3) SCC 220, are strictly complied with.

7.This Criminal Original Petition stands allowed on the above directions.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

dsk

To,

1.The Judicial Magistrate No.I,
Virudhunagar.

2.The Inspector of Police,
Vachakarapatti Police Station,
Vachakarapatti,
Virudhunagar District.

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

+1cc to Mr.R.Pon Karthikeyan, Advocate in SR No.89396

Cr1 OP(MD)No.10291 of 2017

NM/SV/SAR III/31.10.18/2P/5C.