



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.10.2018
CORAM:
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Cr1.O.P.(MD).No.19041 of 2018

WEB COPY

Krishnan @ Krishnadass

... Petitioner

Vs.

State represented by
The Sub Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
(Crime No.321 of 2010)

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records and set aside the order dated 24.07.2018 passed in C.M.P.No.3115 of 2018 in C.C.No.383 of 2011, on the file of the learned Judicial Magistrate No.I, Padmanabapuram, Kanyakumari District.

For Petitioner

:Mr.A.Thiruvadi Kumar

For Respondent

:Mr.R.Anandharaj

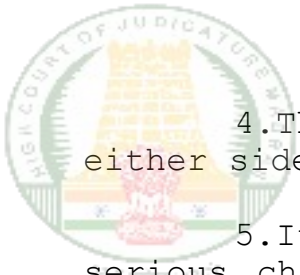
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed, challenging the order passed by the Court below, dismissing the application filed by the petitioner under Section 311 Cr.P.C. to re-call and cross-examine P.W.1 and P.W.2.

2.The learned counsel appearing for the petitioner would submit that the petitioner is facing trial before the Court below for the offences under Sections 279, 337, 338 and 304(A) I.P.C. The learned counsel would further submit that P.W.1 and P.W.2 were examined in the year 2014. At that time, the counsel representing the petitioner did not cross-examine P.W.1 and P.W.2. Thereafter, in the year 2018, the petitioner filed an application under Section 311 Cr.P.C. to recall P.W.1 and P.W.2 to cross-examine them. The said petition has been dismissed. The learned counsel would further submit that since the petitioners are facing trial on a serious charge, one more opportunity should be given to the petitioner to recall P.W.1 and P.W.2 for cross-examination.

3.The learned Additional Public Prosecutor would submit that there is no illegality or infirmity in the order passed by the Court below, since the Court has taken into consideration, the enormous delay in filing the application to recall P.W.1 and P.W.2. The learned Additional Public Prosecutor would further submit that there are totally 12 witnesses to be examined on the side of the prosecution and already five witnesses have been examined. The learned Additional Public Prosecutor would further submit that C.C. 15 of the year 2011 and the petitioner is only trying to drag on the proceedings.



4.This Court has carefully considered the submissions made on either side.

5.It is seen from the records that the petitioner is facing serious charges before the Court below. The prosecution has only examined five witnesses out of the total twelve witnesses. Under such circumstances, this Court is of the considered view that one more opportunity can be given to the petitioner to recall and cross-examine P.W.1 and P.W2.

6.The order passed by the Court below in C.M.P.No.3115 of 2018, dated 24.07.2018 is hereby set aside. The Court below is directed to issue summons to P.W.1 and P.W.2 and fix the date for cross-examination. On the day, when P.W.1 and P.W.2 appear before the Court, the petitioner shall cross-examine on the same day. If for any reason, the petitioner does not cross-examine P.W.1 and P.W2 on the day when they appear before the Court, he shall forfeit his right to recall them again. The petitioner shall pay a sum of Rs.2,500/- (Rupees Two Thousand Five Hundred only) to each of the witnesses when they appear before the Court for giving as evidence. It is also made clear that the petitioner shall cross-examine all the other witnesses on the same day when they are examined in chief.

7.In the result, this Criminal Original Petition is allowed. The Court below is directed to complete the entire proceedings within a period of three months from the date of receipt of copy of this order. The petitioner is directed to co-operate with the proceedings and ensure that it is completed within the time limit fixed by this Court. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1.The Sub Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

2.The Judicial Magistrate No.I,
Padmanabapuram, Kanyakumari District.

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

+1CC to Mr.A.Thiruvadi Kumar, Advocate, SR.No.92427

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