



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P. (MD) No.19301 of 2018

WEB COPY

Sarathkumar

: Petitioner/Accused

Vs.

The Inspector of Police,
Thuraiyur Police Station,
Trichy District.

Crime No.122 of 2016.

: Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and set aside the order passed by the learned Judicial Magistrate, Thuraiyur in C.M.P.No.5242 of 2017 dated 14.09.2017 in C.C.No.125 of 2016 dated 14.09.2017 in respect of dismissing the petition filed by the petitioner under Section 311 Cr.P.C. for recalling of PW2 and PW3 for cross examination which was dismissed in revision by the II ADJ in Crl.R.C.No.88 of 2017 dated 15.02.2018 on the filed by the II ADJ, Trichy as per the ratio decided laid down by the Apex Court.

For Petitioner : Mr.K.Sivabalan

For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.side)

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner to re-call P.W.2 and P.W.3.

2.The petitioner is facing trial before the Court below for the offence under Sections 387 & 506(ii) IPC. In this case prosecution had examined P.W.1 to P.W.5. Since the petitioner did not cross examine witnesses, an application was filed before the Court below in C.M.P.No.5242 of 2017 to recall and cross-examine P.W.1 to P.W.5. The Court below by an order dated 14.09.2017 had allowed the petition insofar as P.W.1, P.W.4 and P.W.5 are concerned and dismissed the petition insofar as P.W.2 and P.W.3 are concerned. Aggrieved by the same, the petitioner filed revision before the learned II Additional District & Sessions Judge, Tiruchirappalli and the learned Judge confirmed the order passed by the learned Judicial Magistrate, Thuraiyur.

3.The learned counsel appearing for the petitioner would submit that P.W.1, P.W.4 & P.W.5 have already been cross-examined.



4.It is seen from the records that the petitioner is facing trial for the offence under Sections 387 & 506(ii) IPC. The Court below having allowed the petition to recall P.W.1, P.W.4 & P.W.5, should have allowed the petitioner also to recall and cross-examine P.W.2 & P.W.3. Once the Court below thought it fit to give opportunity to the petitioner to recall and cross-examine certain witnesses, the Court below should have given that opportunity for all the witnesses. Instead, the Court below allowed it for certain witnesses and denied it for others.

5.In the circumstances, the order passed by the Court below in C.M.P.No.5242 of 2017, dated 14.09.2017, rejecting the petition to recall and cross-examine P.W.2 and P.W.3 are concerned, is hereby set aside. The Court below is directed to issue summons to P.W.2 & P.W.3 by fixing date for their appearance. On the day when the witnesses appear before the Court below, the petitioner shall cross-examine those witnesses on the same day. If any reason the petitioner fails to cross-examine the witnesses on the day when they appear before the Court below, the petitioner shall forfeit his right from recalling these witnesses in future.

6.The court below before putting the witnesses on box, shall permit the witnesses to go through the evidence given by them during chief examination, in order to re-collect the facts. The petitioner is further directed to pay a sum of Rs.500/- to each of the witnesses, when they appear before the Court below.

7.It is made clear that the petitioner shall examine further witnesses, who are examined on the side of the prosecution, on the same day when they are examined in chief.

8.In the result, this Criminal Original Petition is allowed. The Court below is directed to complete the trial within three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.II Additional District and Sessions Judge,
Trichy.

2.The Judicial Magistrate,
Thuraiyur.



3. The Chief Judicial Magistrate,
Trichy (for information)

4. The Inspector of Police,
Thuraiyur Police Station,
Trichy District.

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

+1 cc To Mr.K.Sivabalan, ADVOCATE IN SR NO.92935

gns

MK/ES/RSK/SAR 2/27.12.2018/3P/7C

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