



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2018

CORAM

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THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P. (MD) No.13914 of 2018

and

CrI.M.P. (MD) No.6247 of 2018

Jeyadhas @ Bangaraiyan

... Petitioner

Vs

The Inspector of Police,
Thucklay Police Station,
Kanyakumari District.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records relating to C.M.P.No.3106 of 2018 in C.C.No.1 of 2007 on the file of the Judicial Magistrate, Padmanabhapuram, Kanyakumari District, dated 24.07.2018 and set aside the same and consequently, allow the application filed under Section 311 of Cr.P.C.

For Petitioner : Mr.F.Deepak

For Respondent : Mrs.S.Bharathi

Government Advocate (CrI.side)

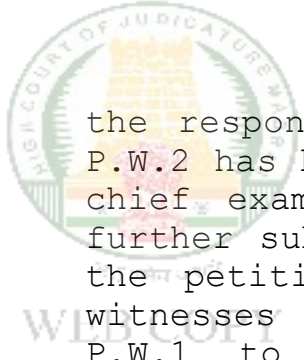
ORDER

This petition has been filed aggrieved by the orders passed by the Judicial Magistrate, Padmanabhapuram, dismissing the application filed under Section 311 of Cr.P.C., to recall P.W.1 to P.W.5 and permit the petitioner to cross examine.

2.The learned counsel appearing for the petitioner would submit that P.W.1 and P.W.2 were examined on 06.09.2010 and 15.11.2010 respectively and thereafter, other three witnesses were examined only on 20.02.2018. The learned counsel submitted that the examination of witnesses on the side of the prosecution is yet to be completed and there are nearly six more witnesses who are yet to be examined by the prosecution.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The learned Government Advocate (CrI.side) appearing for



the respondent submitted that the petition to recall P.W.1 and P.W.2 has been filed nearly after seven years from the date of the chief examination. The learned Government Advocate (Crl.side) further submitted that the petitioner has not cited any reason in the petition as to why he was not able to cross examine the witnesses on the day, when chief examination was completed for P.W.1 to P.W.5. The Government Advocate (Crl.side) further submitted that there are no merits in this petition.

4.This Court has carefully considered the submissions made on either side. It is true that P.W.1 and P.W.2 were examined in chief in the year 2010 and they were not examined by the petitioner. For some reason, the rest of the three witnesses were examined only in the year 2018. It is only at this point of time that the petitioner has filed the petition to recall P.W.1 to P.W.5 in order to cross examine them. One more factor that is to be taken into consideration is that there are other witnesses, who are yet to be examined on the side of the prosecution. Taking into consideration the facts and circumstances of the cases, this Court deems it fit to give one last opportunity to the petitioner to recall and examine P.W.1 to P.W.5.

5.The trial Court shall fix a date for the appearance of the witnesses P.W.1 to P.W.5. Before putting the witnesses in the witness box, they shall be furnished with the deposition, so that, they can refresh their memory and only thereafter, they can be subjected to the cross examination.

6.On the date, when the witnesses appear if the petitioner fails to cross examine them even on account of boycott of Court, the petitioner will forfeit his right to recall them again. The petitioner shall pay a cost of Rs.750/- to each of the witnesses, when they come for giving evidence.

7.Accordingly, the order of the learned Judicial Magistrate, Padmanabhapuram, made in C.M.P.No.3106 of 2018 in C.C.No.1 of 2007 is hereby set aside and the criminal original petition is allowed to the extent as indicated above. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-I)



To

1. The Inspector of Police,
Thucklay Police Station,
Kanyakumari District.

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

+ 1 CC TO Mr.F.DEEPAK, ADVOCATE IN SR No. 77566

RMI

TE/RP/SAR-1 : 03/09/2018 : 3P/4C

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