



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA
Crl.O.P. (MD) .No.19806 of 2018
and
Crl.M.P. (MD) .No.9064 of 2018

Gunasekaran

... Petitioner

Vs.

The Inspector of Police,
Kottaipattinam Police Station,
Pudukkottai District.
Crime No.8 of 2014

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records of the order passed on 07.08.2018 in C.C.No.96 of 2015, on the file of the learned Judicial Magistrate Court, Aranthangi and set aside the same insofar as it relates to rejection of recall of PW.2.

For Petitioner : Mr.M.Suresh
For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed seeking to set aside the order passed on 07.08.2018 in C.C.No.96 of 2015, on the file of the learned Judicial Magistrate Court, Aranthangi, insofar as it relates to rejection of recall of PW.2.

2. The learned counsel for the petitioner would submit that P.W.2 is an important witness and he is a witness to the occurrence and that he has deposed implicating the petitioner. The learned counsel would submit that since it was just and necessary that P.W.1 and P.W.2 had to be recalled and examined, the petition had been filed under Section 311 of Criminal Procedure Code to recall both P.Ws.1 and 2. The learned Magistrate, without considering the matter in the right perspective, partly allowed the petition filed under Section 311 of Criminal Procedure Code and while partly allowing the petition for recalling P.W.1, the trial court had dismissed the petition in respect of P.W.2. He would further submit that the object underlying Section 311 of Criminal Procedure Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side and that the determinative factor is whether it is essential to the just decision of the case. He would also submit that the learned Magistrate without taking into consideration this aspect rejected the prayer in respect of P.W.2 despite P.W.2 having spoken about the occurrence.



3. The learned Additional Public Prosecutor would submit that the learned Magistrate has rightly dismissed the prayer of the petitioner. He would further submit that the learned Judge had observed that P.W.2 is aged about 13 years, a minor and a student and that though sufficient time had been given to the petitioner for cross-examination, the petitioner had not recalled him and thereby, the learned Judge has dismissed the petition.

4. I have gone through the order passed by the learned trial Judge, I find no infirmity in the order passed by the learned Magistrate since he had holding that P.W.2 being a minor cannot be recalled. However, taking into consideration the deposition of P.W.2, it is seen that he has deposed about the occurrence and thereby, this Court is of the opinion that one more opportunity can be given to the petitioner to recall of P.W.2 and cross-examine him and that the petition can be allowed on imposition of cost and fixing stringent terms.

5. At this juncture, this Court enquired the learned Additional Public Prosecutor, whether it would be possible for the prosecution to produce the witnesses. He would further submit that he will be able to produce the witnesses on the next hearing which is on 19.12.2018.

6. In view of the submission made by the learned counsel for both sides, this Court directs the learned trial Judge to permit the petitioner to recall and cross-examine the witness P.W.2. The respondent shall take steps to produce the witnesses P.W.2 before the Court on 19.12.2018, or on any other convenient date at the earliest, on which day, the learned counsel for the petitioner shall cross-examine P.W.2 without taking any further adjournment. The copy of the deposition of P.W.2 shall be furnished to P.W.2 for refreshing his memory. The petitioner shall pay cost of Rs.1000/- (Rupees One Thousand Only) to the witness P.W.2, on the date fixed for cross examination. The petitioner shall also pay the amount of Rs.3,000/- (Rupees Three Thousand only) as costs by means of Demand Draft in favour of the "Chief Minister's Public Relief Fund" and hand it over to the Registrar (Judicial) of the Madurai Bench of Madras High Court, Madurai, within a period of one week` from the date of receipt of a copy of this order and file a photocopy of the receipt along with a memo for reporting compliance in the Registry.

7. With the above observations, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



TO

1. The Judicial Magistrate Court, Aranthangi.

2. The Inspector of Police,
Kottaipattinam Police Station,
Pudukkottai District

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

Copy to

1. The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.
2. The Section Officer, Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

- 1 CC TO Mr.M.Suresh , ADVOCATE IN SR No.97937.
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- DS RSK SAR4 17 12 2018 3P 7C

Cr1.O.P. (MD) .No.19806 of 2018
and
Cr1.M.P. (MD) .No.9064 of 2018
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