



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2018

CORAM:

WEB COPY THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**
Crl.O.P. [MD] No.20128 of 2018

S.Gurunathan

: Petitioner

vs.

State through
The Inspector of Police,
Dhevarkulam Police Station,
Tirunelveli District.
C.C.No.386 of 2014

: Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records pertaining to the impugned order dated 23/08/2018 made in Crl.M.P.No.2612 of 2018 in connection with C.C.No.386 of 2014 on the file of the learned Judicial Magistrate No.III, Tirunelveli and set aside the same and allow the above petition.

For Petitioner : Mr.Niranjana S.Kumar
For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

ORDER

This petition has been filed to set aside the order dated 23.08.2018 made in Crl.M.P.No.2612 of 2018 in C.C.No.386 of 2014 on the file of the learned Judicial Magistrate No.III, Tirunelveli, dismissing the petition to re-call the prosecution witnesses namely, P.W3, P.W5, P.W6, P.W12, P.W13 and P.W14.

2.The learned counsel for the petitioner would submit that the petitioner stood charged for the offence under Sections 279, 337 and 338 of IPC @ 304(A) IPC. He would further submit that the petitioner had filed the petition to re-call the witnesses for the purpose of cross-examination, whereas, the trial Court without considering the necessity of cross-examining the above witnesses, had dismissed the petition.

3.The learned counsel for the petitioner further would submit that as per Section 311 Cr.P.C., the learned Judge, got powers to re-call the witnesses, whereas, the trial Court failed to exercise its power thereby causing prejudice to the petitioner / accused. He would further submit that denial of the petition to cross-examine the witnesses would amount to denial of fair opportunity to the accused and would seek to set aside the order and permit the petitioner to re-call the witnesses.



4.The learned Additional Public Prosecutor would submit that sufficient opportunity had been given to the petitioner to cross-examine the witnesses, whereas, the petitioner has failed to cross-examine them with an oblique motive of protracting the trial and had filed this petition at the fag end of the trial at the stage of when the case has been posted for arguments. He would further submit that P.W3 had been examined in chief on 11.05.2017, P.W5 and P.W6 had been examined in chief on 06.05.2015, P.W12 had been examined in chief on 11.05.2017 and P.W13 had been examined in chief on 22.02.2018. He would further submit that there is no infirmity or error in the order passed by the learned trial Judge and would seek for dismissal of the petition.

5.I have gone through the orders passed by the learned trial Judge.

6.The trial Court Judge has passed the detailed order, in which, it had been stated that sufficient opportunities were given to the petitioner for cross-examining the witnesses and that the petitioner had not availed the opportunities to cross-examine the witnesses. Going through the order, I find no infirmity or error in the order passed by the learned trial Judge.

7.At this juncture, the learned counsel for the petitioner would submit that P.W3 is an eye witness to the occurrence and P.W13 is the Investigating Officer and he would further submit that if the petitioner is not allowed to re-call at least these two witnesses, it would amount to a case of no defence and it would only result in the second round of litigation and he would further submit that the petitioner would restrict his claim in respect of recalling P.W3 and P.W13 alone. He would also submit that if permission is granted, the witnesses will be cross-examined on the same day of their appearance.

8.Though the order passed by the learned trial judge is in accordance with the judgment of the Hon'ble Supreme Court in the case of **Vinod Kumar Vs. State of Punjab** reported in **(2015) 1 MLJ (Cr1) 288 (SC) LNIND 2015 SC 46**, this Court is of the opinion that if P.W3 and P.W13 are not cross-examined, it will be a case of no defence at all.

9.This Court on the earlier occasion enquired the learned Additional Public Prosecutor, whether the respondent would be able to produce P.W3 and P.W13 before the Court for cross-examination on a particular day that may fixed by this Court. The learned Additional Public Prosecutor on instructions from the respondent would submit that they would be able to produce P.W3 and P.W13 on a specific date that may be fixed by this Court. The petitioner has also given an undertaking that he would cross-examine P.W3 and P.W13 on the date of appearance without fail. The learned counsel for the petitioner would also undertake that the petitioner would



positively cross examine P.W3 and P.W13 on the date of their appearance.

10. Taking into consideration the submissions made by both side counsel and the undertaking given by the learned counsel for the petitioner, I am inclined to pass the following order:

"The respondent is directed to produce P.W3 and P.W13 on 16.11.2018 or any other date fixed by the trial Court and the petitioner shall cross examine them on the date of their appearance without fail. This Court also imposes the cost of Rs.15,000/- out of which the amount of Rs.2,000/- shall be paid to P.W3 as cost and Rs.5,000/- shall be paid to P.W13 as cost and a balance of Rs.8,000/- shall be paid to the High Court Legal Services Authority and the receipt shall be produced before the trial Court. The amount will be paid to P.W3 and P.W13 on the date of their appearance."

11. This criminal original petition is disposed of accordingly.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-I)

To

1. The Judicial Magistrate No.III,
Tirunelveli.

2. The Inspector of Police,
Dhevarkulam Police Station,
Tirunelveli District.

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

4. The Secretary,
High Court Legal Service Authority,
Madurai Bench of Madras High Court, Madurai.

+1 CC To MR.NIRANJAN S.KUMAR, Advocate SR. NO. 95048

Cr1.O.P. [MD] No.20128 of 2018
13.11.2018