



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.09.2018
CORAM
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P. (MD) No.16752 of 2018

WEB COPY

P.Vasanthakumar

... Petitioner

Vs.

1.State through Inspector of Police,
Marthandam Police Station,
Kanyakumari District.
(Crime No.249 of 2008)

...Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Cr.M.P.No.8241 of 2016 dated 08.09.2016 in C.C.NO.171 of 2008 on the file of the learned Judicial Magistrate, Kuzhithurai, Kanyakumari District and set aside the order of the dismissal against recall of the P.W.2 to P.W.4 in Cr.M.P.No.8241 of 2016 dated 08.09.2016 in C.C.No.171 of 2008.

For Petitioner	: Mr.KA.Raamakrishnan
For Respondent	: Mr.K.Suyambulinga Bharathi, G.A. (Cr1.side)

ORDER

This petition has been filed challenging the order passed by the Court below, dismissing the application filed by the petitioner under Section 311 of Cr.P.C in Cr.M.P.No.8241 of 2016 to recall and cross-examine P.W.2 to P.W.7.

2.The petition to recall the witnesses has been filed by the learned counsel, who represents on behalf of the petitioner before the Court below. In the said petition, the learned counsel for the petitioner had made a statement that when the above said witnesses were examined in chief, he was not in a position to cross-examine them. Immediately thereafter, an application had been filed seeking to give an opportunity to the petitioner to cross-examine those witnesses. In short, the learned counsel had admitted in the petition that it was his mistake of not examining the witnesses and the same should not prejudice the interest of the petitioner.

3.The Court below, after considering the facts and circumstances of the cases, has allowed the petition in particular, by permitting the petitioner to recall and cross-examine P.W.5 to P.W.7 and insofar as P.W.2 to P.W.4 are concerned, the Court below has dismissed the petition. The Court below has not assigned any reason as to why the petition was dismissed insofar as P.W.2 to P.W.4 are concerned. If the Court below thought it fit to allow the



petitioner to recall and cross-examine P.W.5 to P.W.7, then the same analogy will apply to P.W. 2 to P.W.4 also. The petition ought not to have been dismissed by giving a piecemeal remedy to the petitioner.

4.This Court has to necessarily interfere with the order passed by the Court below. Accordingly, the order of the Court below made in Cr.M.P.No.8241 of 2016, dated 08.09.2016, insofar as dismissing the relief of recalling and cross-examining P.W.2 to P.W.4 are concerned, is hereby set aside. The Court below is directed to fix the date for the appearance of P.W.2 to P.W.4. Since these witnesses were examined in chief long back, before putting them 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 cross-examine. On the date, when the witnesses appear, if the petitioner fails to cross-examine, for any reason, the petitioner will forfeit his right to recall them again. The petitioner shall pay a cost of Rs.2000/- (Rupees Two Thousand only) to each of the witnesses, when they come for giving evidence.

5.This Criminal Original Petition is allowed with the above direction.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

- 1.The Judicial Magistrate,
Kuzhithurai, Kanyakumari District.
- 2.The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.KA.Raamakrishnan, Advocate, SR.No.86144

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RMK

ES/SKN/RSK/SAR 4/15.10.2018/2P/5C

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