

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2019

CORAM:

THE HON'BLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.400 of 2019 and Crl.MP No.243 of 2019

1. Karthikeyan
2. Thangamani
3. Sumathi

... Petitioners

Vs.

State by the Inspector of Police,
All Women Police Station,
Tiruppur North

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr. PC to set aside the order dated 14.12.2018 made in Crl.MP.No.11060 of 2018 in CC No.659 of 2017 on the file of learned Judicial Magistrate No.1, Tiruppur and allow this Criminal Original Petition.

For Petitioner : Mr.J.Franklin

For Respondents: Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed challenging the order passed by the Court below dismissing the petition filed under Section 311 of Cr.P.C filed by the petitioner for recall and cross examination of PW1, PW7 and PW8.

2. The petitioners are facing a trial before the Court below for an offence under Section 498A, 506 (ii) IPC. The prosecution had examined 8 witnesses and the petitioner did not cross-examine PW7 & PW8. Thereafter, the petitioners were questioned under Section 313 of Cr.PC and the case was posted for defence evidence and since no witnesses were produced, the defence evidence was closed and the case was at the stage of arguments. At this stage, the present petition came to be filed before the Court below to recall and cross-examine PW1, PW7 and PW8.

3.The Court below had dismissed the petition on the ground that PW1 was already cross-examined by the petitioners and there is no reason for again recalling PW1 for further cross-examination. The Court below also found that the petitioners ought to have cross-examined PW7 and PW8 on the same date, they were examined in chief. But this was not done by the petitioners and therefore, the Court below relying upon the judgement of the Hon'ble Supreme Court in Vinod Kumar Vs. State of Punjab proceeded to dismiss the petition filed by the petitioners.

4. This Court does not find any illegality or infirmity in the order passed by the Court below. However, it is seen from the records that the petitioners have participated in the proceedings which commenced in the year 2017 and have cross examined most of the witnesses. The petitioners want to further cross-examine PW1 on the ground that certain important documents needs to be marked through PW1 and PW1 has to be questioned on those documents. PW7 is the police officer who registered the FIR and PW8 is the Investigating Officer.

5. This Court is of the considered view that one last opportunity can be given to the petitioners to cross-examine PW1, PW7 and PW8 by imposing certain conditions.

6. The order passed by the Court below in C.M.P.No.11060 of 2018 dated 14.12.2018 is hereby set aside. The Court below shall fix a date for cross-examination of PW1, PW7 and PW8. On the day, when these witnesses appear, they shall be cross-examine by the petitioners on the very same date. If for any reason, the petitioners fails to cross-examine them, the petitioners shall forfeit their right to recall these witnesses for cross-examination in future. The petitioners shall pay a sum of Rs.5,000/- to PW1, Rs.1,000/- each to PW7 and PW8, when these witnesses appear before the Court for cross-examination. The Criminal Original Petition is accordingly allowed and the Court below is directed to complete the proceedings in CC No.659 of 2017 on the file of the learned Judicial Magistrate No.1, Tiruppur, within a period of three months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is also closed.

rka/rri

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

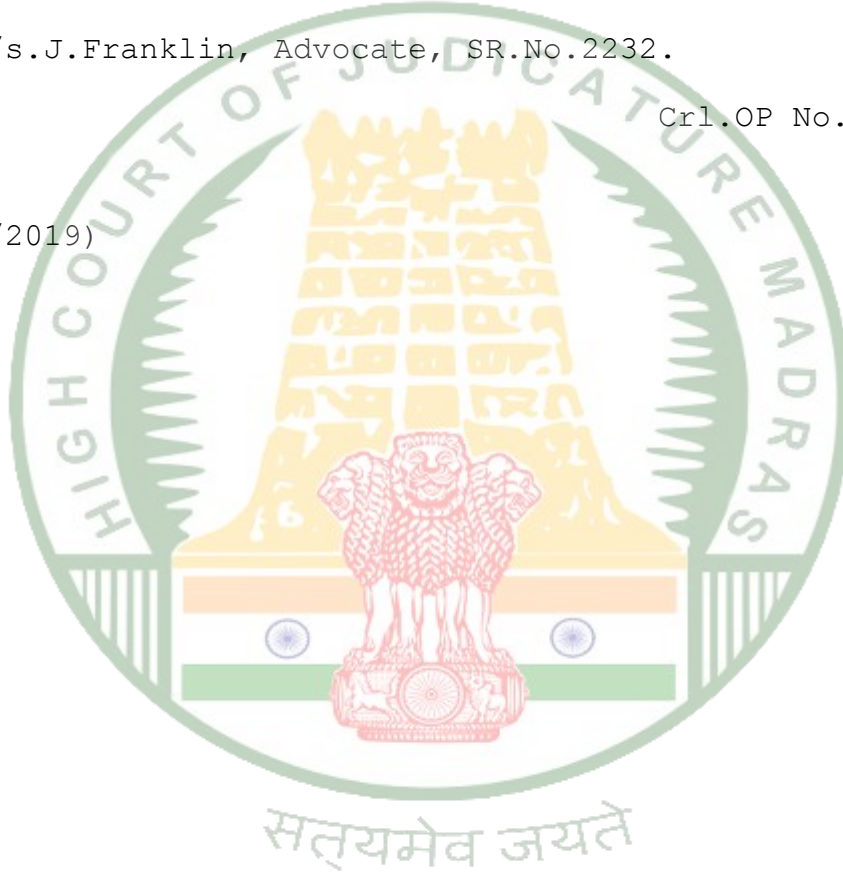
To

1. The Judicial Magistrate No.1,
Tiruppur.
2. The Inspector of Police,
All Women Police Station,
Tiruppur.
3. The Public Prosecutor,
High Court of Madras.

+1cc to M/s.J.Franklin, Advocate, SR.No.2232.

Cr1.OP No.400 of 2019

MG (CO)
KAK (31/01/2019)



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