

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 30.01.2019

CORAM:

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.2280 of 2019
and
Crl.M.P.No.1504 of 2019

Ayyappan

... Petitioner

Vs.

State by
The Inspector of Police,
North All Women Police Station,
Tirupur.
(Crime No.28 of 2017)

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order dated 27.12.2018 made in Crl.M.P.No.10652 of 2018 in C.C.No.692 of 2017 on the file of learned Judicial Magistrate No.I, Tirupur.

For Petitioner : Mr.P.M.Duraiswamy

For Respondent : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the petition filed under Section 311 Cr.P.C seeking to recall P.Ws.2 and 3 for cross examination.

2.The petitioner is facing trial before the Court below for an offence under Sections 417, 406 and 506(i) of IPC. The prosecution had examined P.Ws. 1 to 5. The petitioner had already cross examined P.Ws.1, 4 and 5. However, P.Ws.2 and 3 were not cross examined since the counsel representing the petitioner was not able to be present before the Court below. P.W.2 was examined-in-chief on 12.09.2018 and P.W.3 was examined-in-chief on 26.09.2018.

3.The Court below dismissed the petition only on the ground that mere absence of an advocate cannot be a ground to allow a petition for recalling the witnesses. The Court below had relied

upon the judgment of the Honourable Supreme Court in Vinod Kumar Vs. State of Punjab reported in 2015 (3) SCC 220.

4. In the fact and circumstances of the case, this Court is of the considered view that one last opportunity must be given to the petitioner in order to recall and cross examine P.Ws.2 and 3.

5. The order passed by the Court below in C.M.P.No.10652 of 2018 in C.C.No.692 of 2017 dated 27.12.2018 is hereby set aside. The Court below is directed to issue summons to P.Ws.2 and 3 and fix a date for cross examination. On the date of their appearance, the petitioner shall cross examine them on the same day. If for any reasons, the petitioner fails to cross examine P.Ws.2 and 3 on the date of their appearance, the petitioner shall forfeit his right to recall P.Ws.2 and 3 at a future date. The petitioner shall pay a sum of Rs.500 as cost to each of the witnesses.

6. This Criminal Original petition is accordingly allowed and the Court below is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order. Consequently, the connected CrI.M.P.No.1504 of 2019 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsg1/ia

To:

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

CrI.O.P.No.2280 of 2019

GP(CO)
GN(27/02/2019)