

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.3269 of 2018

and

Crl.M.P.No.1406 of 2018

Y.Sujatha

... Petitioner/Petitioner/Accused

Vs

N.Mathivanan

... Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to set aside the order passed by the learned Judicial Magistrate No.I, Thiruppathur, Vellore District in Crl.M.P.No.4551 of 2017 in S.T.C.No.397 of 2016 dated 18.01.2018.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.V.Jeevagiridharan

O R D E R

This Criminal Original Petition has been filed by the petitioner challenging the order passed by the Court below in Crl.M.P.No.4551 of 2017 in S.T.C.No.397 of 2016 dated 18.01.2018 on the file of the Judicial Magistrate No.I, Thiruppathur, Vellore District, thereby, dismissing the petition filed by the petitioner under section 311 of Cr.P.C to recall and cross examine D.W.1.

2.The learned counsel for the petitioner would submit that D.W.1 was cross examined on 21.09.2017 and she informed before the Court below that she is having further witness on her side and took time for producing the witness. On 03.11.2017, the husband of the petitioner was examined on her side as D.W.2 and he was also cross examined by the respondent. Again the petitioner took time for producing the witness before the Court and posted to 29.11.2019. Further, he would submit that the petitioner filed another petition under Section 311 Cr.P.C in Crl.M.P.No.4551 of 2017 dated 29.11.2017 to recall and cross-examine D.W.1 and the same was dismissed, on the ground that the

petitioner did not mention in the petition about what type of documents to be marked through the D.W.1. He further submitted that the petitioner's counsel need to mark the documents through D.W.1 and his re-examination is very necessary. Hence, the petition.

3.Heard both sides.

4.This Court is of the considered view that one more opportunity can be given to the petitioner in order to recall and cross examine D.W.1.

5. Therefore, this petition is allowed and the order passed by the Court below in Crl.M.P.No.4551 of 2017 in S.T.C.No.397 of 2016 dated 18.01.2018 is hereby set aside. The petitioner is directed to cross examine D.W.1 on the date fixed by the Trial Court for cross examination and the same day when D.W.1 appears before the Court below. If for any reason, the petitioner fails to cross examine D.W.1 on the same day, the petitioner shall forfeit his right to recall D.W.1 for cross examination in future. The petitioner shall pay necessary cost to the witness. Failing which, the learned Trial Judge is directed to proceed with the trial on merits and in accordance with law.

6.It is made clear that the trial Court fix up a date for cross examination of D.W.1 within a period of one week from the date of receipt of a copy of this order and to complete the trial proceedings within a period of four weeks therefrom.

Sd/-  
Assistant Registrar(AD IV)

//True Copy//

Sub Assistant Registrar

mpa  
To

The Judicial Magistrate No.I,  
Thiruppathur, Vellore District.

+1cc to Mr.E.Kannadasan, Advocate Sr.32848

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srg 23/05/2019