

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.01.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.1998 of 2019

and

Crl.M.P.No.1289 of 2019

K.Vijaya

... Petitioner

-Vs-

State rep by  
The Inspector of Police,  
District Crime Branch,  
Ariyalur.

... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in Cr.M.P.No.2060 of 2018 in C.C.No.79 of 2014 on the file of the Judicial Magistrate No.I, Jayankondam and to set aside the order dated 07.01.2018.

For Petitioner : Mr.A.Padmanaban

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

ORDER

This petition has been filed challenging the order passed by the Court below allowing the petition filed under Section 311 of Cr.P.C, by the prosecution to recall PW.1 and to mark certain documents.

2. The petitioner is facing trial before the Court below for an offence under Sections 468 and 471 of IPC. The prosecution had examined nine witnesses and had marked four documents and the defendants had also examined one witness and marked one document. The case was at the stage of oral arguments. At this stage, the prosecution has come forward to file a petition under Section 311 of Cr.P.C to recall PW.1 and to mark the service register of the petitioner and also the transfer certificate of one Rajagopal, who was examined as PW.4.

3. The Court below has allowed the said petition on the ground that the same is required for the purpose of coming to a just conclusion in this case. The Court has rejected the contention raised by the petitioner that the prosecution is attempting to fill up the lacuna.

4. The learned counsel for the petitioner submitted that these documents were not relied upon by the prosecution at the time of investigation. The learned counsel further submitted that this was raised as an argument at the time of final hearing and therefore now the prosecution wants to fill up the lacuna and that should not be permitted by this Court. The learned counsel further submitted that the case is pending from the year 2014 and filing a petition at the belated stage should not have been entertained by the Court below.

5. The Additional Public Prosecutor submitted that the discretion vested with the Court under Section 311 of Cr.P.C is very wide. The prosecution has not attempted to fill up the lacuna and the prosecution has only taken steps to mark certain vital documents in order to substantiate the case of the prosecution and therefore the prosecution is trying to substantiate the case of the prosecution by marking these document. The learned counsel submitted that there are absolutely no grounds to interfere with the order passed by the Court below.

6. This Court has carefully considered the submissions made on either side.

7. The present petition has been filed by the prosecution under Section 311 of Cr.P.C to recall PW.1 and to mark two documents. The Court below had considered the entire facts and circumstances of the case and has come to a conclusion that a fair opportunity must be given to the prosecution to establish its case and the Court has used its discretion under Section 311 of Cr.P.C by giving sufficient reasons. This Court is not able to find any illegality or infirmity in the order passed by the Court below.

8. The contention of the learned counsel for the petitioner that the documents sought to be marked did not form part of the investigation is not a ground to deny the prosecution an opportunity to mark those documents. After all, the prosecution only wants to mark the service register of the petitioner and the transfer certificate of PW.4. The Court below has given sufficient reasons for allowing the prosecution to recall PW.1 and mark the documents and the Court below has given a finding that the same is required for the purpose of coming to a just conclusion. Useful reference can be made to

the judgment of this Court in 2018 (2) L.W (Crime) 944, wherein, this Court has considered this scope of section 311 of Cr.P.C in detail. The petitioner will always have the opportunity to cross examine the witness and also put sufficient question to the witness with regard to the documents which are sought to be marked by the prosecution. No prejudice will be caused to the petitioner, since the petitioner will have sufficient opportunity to cross examine the witness as well as question the relevancy of the documents sought to be marked by the prosecution. After all, the documents sought to be marked, are subject to admission, proof and relevancy.

9. This Court does not find any illegality or infirmity in the order passed by the Court below. This Criminal Original Petition is dismissed. The trial Court is directed to complete the proceedings in C.C.No.79 of 2014, within a period of two months from the date of receipt of the copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.I,  
Jeyankondam.

2.The Inspector of Police,  
District Crime Branch,  
Ariyalur.

2.The Public Prosecutor,  
High Court, Madras.

+1 cc to Mr.A.Padmanaban, Advocate Sr.No.6556

BR(CO)  
CSL/01.03.2019

Cr1.O.P.No.1998 of 2019

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