

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.01.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.1867 of 2019
and Crl.M.P.No.1154 of 2019

Chinnaraj @ Udayan

... Petitioner

-Vs-

The State:

by the Inspector of Police,
E2, Royapettah Police Station,
Royapettah
Chennai - 600 014.

... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to set aside the order passed in Crl.M.P.No.16492 of 2018 in S.C.No.172 of 2017 by the Mahila Sessions Judge, Chennai dated 05.10.2019 with regard to dismissal of the petition to cross examine of PW18 and further cross examine PW13 & 16.

For Petitioner : Mr.K.Balaji
For Respondent : Mr.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below partly dismissing the application filed by the petitioner under Section 311 of Cr.P.C. denying the request of the petitioner to cross-examine PW13, 16 and 18.

2.The petitioner is facing trial before the Court below for an offence under Section 302 of IPC. The prosecution has examined 19 witnesses. The petitioner did not cross-examine some of the witnesses and therefore, a petition has been filed before the Court below for recall and cross-examination of PW1, PW4, PW5, PW6, PW7, PW8, PW9, PW13, PW16, PW18 and PW19. The Court below allowed the petition insofar as PW1, PW4 to PW9 and 19. However, it dismissed insofar as PW13, 16 and 18.

3.The learned counsel for the petitioner submitted that the petitioner is facing a very serious charge before the Court below. Therefore, sufficient opportunity must be given to the petitioner to cross-examine PW13, 16 and 18. The learned counsel

for the petitioner submitted that PW13 and 16 were already examined. However, certain vital questions were not put to them and therefore, they have to be recalled for the purpose of making an effective cross-examination. The learned counsel would further submit that PW18 was not cross-examined at any point of time and therefore, one last opportunity must be given to the petitioner to cross-examine PW18.

4.The learned Additional Public Prosecutor, on instructions, would submit that since the petitioner has already cross-examined PW13 and 16, there is no requirement to recall them again only on the ground that there is a change in counsel. The learned Additional Public Prosecutor submitted that the petitioner can be given an opportunity to cross-examine PW18, on terms.

5.In the facts and circumstances of the case, this Court is of the considered view that one last opportunity can be given to the petitioner to recall PW13, 16 and 18 and cross-examine them. The petitioner having been given an opportunity to recall and cross-examination of other witnesses, can as well be given an opportunity to cross-examine these three witnesses also. The petitioner is facing serious charges under Section 302 (2 counts) of IPC.

6.The order passed by the Court below in Crl.M.P.No.16492 of 2018, dated 05.10.2018, is set aside insofar as dismissing the petition for recall and cross-examination of PW13, 16 and 18. The Court below is directed to issue summons to these three witnesses and fix a date for cross-examination. On the date of appearance of these three witnesses, the petitioner is directed to complete the cross-examination on the same day. If the petitioner for any reason fails to cross-examine any of these witnesses on the date of their appearance, the petitioner shall forfeit his right to recall these witnesses in future. The petitioner shall pay a sum of Rs.3000/- each to PW13 and P16 at the time of their appearance before the Court below.

7.This Criminal Original Petition is allowed accordingly and the Court below is directed to complete the proceedings in S.C.No.172 of 2017 on the file of the Mahila Sessions Court, Chennai, within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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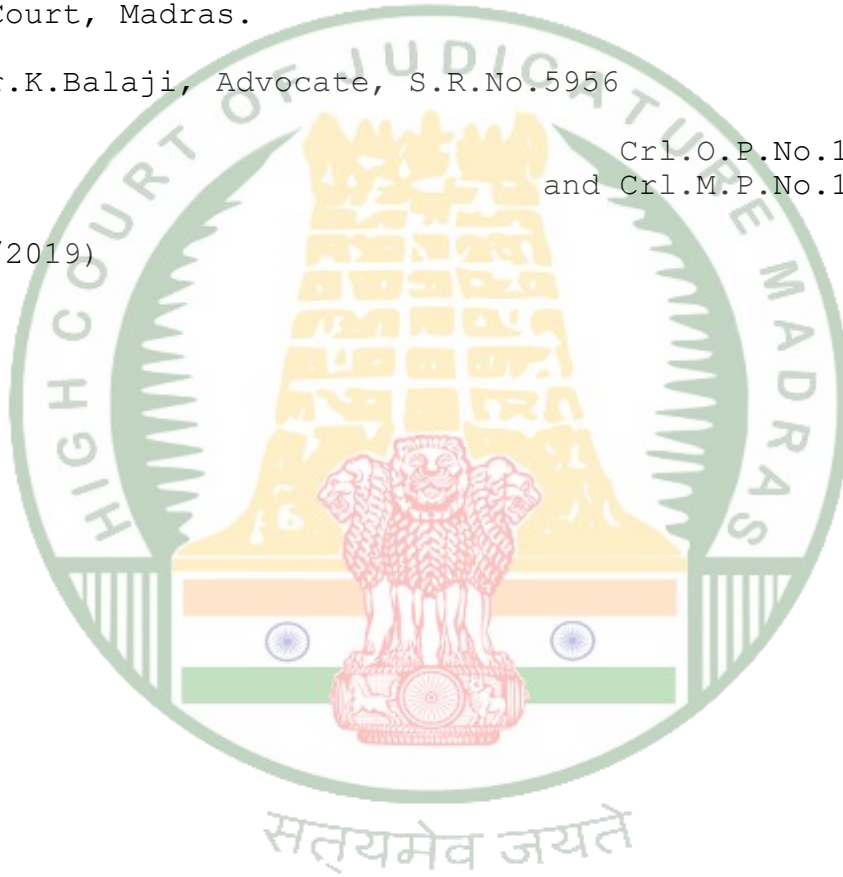
To

1. The Mahila Sessions Judge,
Chennai.
2. The Inspector of Police,
E2, Royapettah Police Station,
Royapettah
Chennai - 600 014.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Balaji, Advocate, S.R.No.5956

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GSP(11/02/2019)



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