

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2019

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.2166 of 2019

S.Adikesavan

... Petitioner

Vs.

The State Rep. by
Inspector of Police,
K10, Koyambedu Police Station,
Chennai.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order in Crl.M.P. No.20918 of 2018 in S.C. No.43 of 2018 on the file of Mahalir Needhi Manram, Chennai.

For Petitioner : Ms.S.Sridevi

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

O R D E R

This petition has been filed against the order passed by the Court below partly allowing the petition filed by the petitioner under Section 311 Cr.P.C.

2.The petitioner is facing trial before the Court below for an offence under Section 302 I.P.C. The petitioner filed a petition under Section 311 Cr.P.C. to recall P.Ws.3, 5, 6, 7 and 8 for cross-examination. The Court below allowed the petition only insofar as P.Ws.3 and 5 are concerned and dismissed the petition insofar as P.Ws.6, 7 and 8 are concerned.

3.The Court below has dismissed the petition insofar as P.Ws.7 and 8 are concerned on the ground that they have already been treated as hostile. Insofar as P.W.6 is concerned, the Court below has stated in the order that he is a mahazer witness and sufficient opportunity was given to the petitioner to cross-examine him and therefore, P.W.6 cannot be recalled since it will cause hardship to him.

4.The learned counsel for the petitioner submitted that the petitioner must be given sufficient opportunity to cross-examine the witnesses since he is facing trial for a serious charge under Section 302 I.P.C.

5.This Court has carefully considered the submissions made on either side. The Court below was right in refusing to recall P.Ws.7 and 8, since they have already been treated as hostile witnesses. The Court below dismissed the petition insofar as P.W.6 is concerned only on the ground that it will cause hardship to the said witness. The Court below having allowed the petition for P.W.5, ought to have considered allowing the petition for P.W.6 also. After all the petitioner is facing a very serious charge and sufficient opportunity must be given to the petitioner to defend his case.

6.The order passed by the Court below in CrI.M.P. No.20918 of 2018 in S.C. No.43 of 2018, dated 10.12.2018 is partly set aside insofar as P.W.6 is concerned. The Court below is directed to issue summons to P.W.6 and fix a date for cross-examination. On the date when P.W.6 appears before the Court below, the counsel for the petitioner shall cross-examine P.W.6, on the same day. If for any reason, the petitioner fails to cross-examine P.W.6 on the date of appearance, the petitioner shall forfeit his right to recall P.W.6 in future. The petitioner shall pay a cost of Rs.500/- to P.W.6 on the date of appearance.

7.This Criminal Original Petition is partly allowed and the Court below is directed to complete the proceedings within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ia/vsg1

To:

1.The Mahalir Needhi Manram,
Chennai.

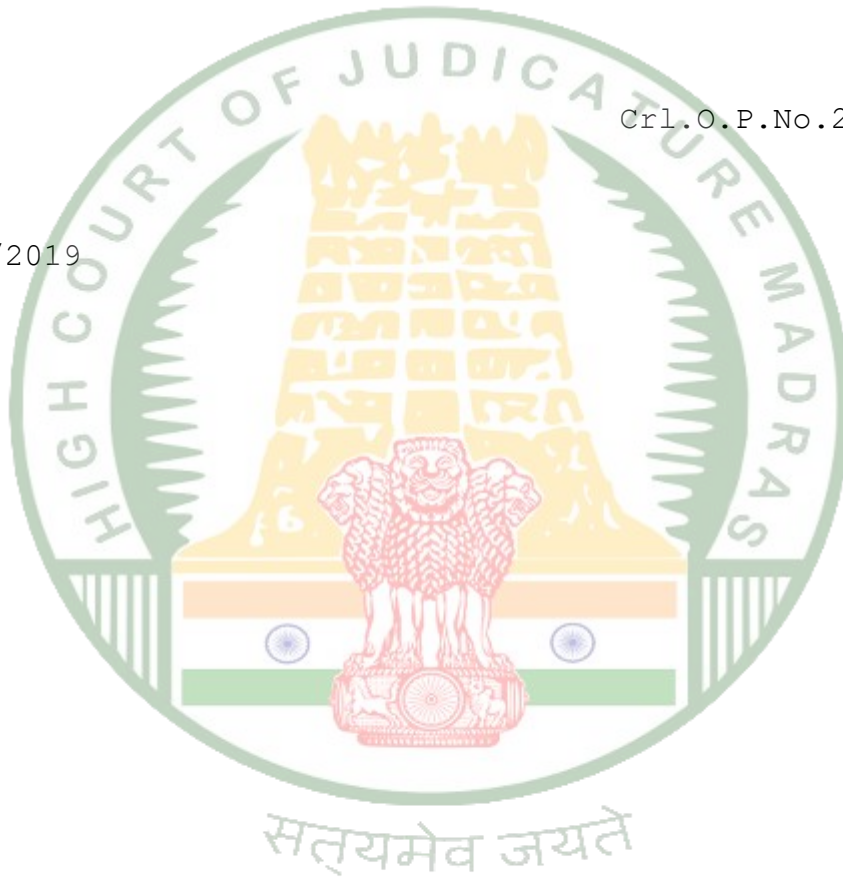
2.The Inspector of Police,
K10, Koyambedu Police Station,
Chennai.

3.The Additional Public Prosecutor,
Madras High Court,
Chennai - 104.

+lcc to M/S.S.Sridevi, Advocate sr.6580

CrI.O.P.No.2166 of 2019

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srg 15/02/2019



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