

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P.No.2243 of 2019

Arunachalam

..Petitioner

Vs

State represented by

The Inspector of Police,
K-6, TP Chathram Police Station,
Chennai - 600 026.
Crime No.241 of 2008.

..Respondent

Prayer: This Criminal Original Petition filed under Section 407 of Cr.P.C, praying to call for the records and to set aside the order passed by the Trial Magistrate in Crl.M.P.No.6567 of 2018 in C.C.No.13715 of 2008 dated 28.12.2018.

For Petitioner : Mr.K.Kannan

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 by the petitioner under Section 311 Cr.P.C., to recall and cross-examine PW1 to PW5.

2. It is seen from records that these witnesses were examined from the year 2013 to 2018 and right through this petitioner has not chosen to cross-examine these witnesses.

3. The Court below has dismissed the petition on the ground that the proceedings commenced in the year 2008 and the petitioner had waited all along and chosen to file a petition to recall these witnesses only in the year 2018. The Court below also took into consideration of the fact that a mere change in counsel cannot be a ground to recall the witnesses.

4. This Court is not able to see any perversity in the order passed by the Court below.

5. The learned counsel for the petitioner submitted that the petitioner is facing a serious charge for an offence under Section 379 of IPC. The Learned counsel also submitted that for the mistake committed by the counsel, the petitioner should not face the consequence and the learned counsel further submitted that this Court can fix a time limit for the completion of the entire proceedings.

6. In the facts and circumstances of the case, this Court is of the considered view that one final chance can be granted to the petitioner to recall and cross-examine PW1 to PW5. The order passed by the Court below in CrI.M.P.No.6567 of 2018, dated 28.12.2018, is hereby set aside. The Court below is directed to issue summons to PW1 to PW5 and to fix a date for their cross-examination. On the date of their appearance, the Court below shall furnish them with a copy of the deposition, in order to enable these witnesses to refresh their memories. Thereafter, the petitioner shall cross-examine these witnesses on the same day of their appearance. If for any reasons, the petitioner 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.2,500/- to each of the witnesses on the date of their appearance.

6. Accordingly, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings, with in a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rka/dua

To

1.The Vth Metropolitan Magistrate,
Egmore, Chennai.

2.The Inspector of Police,
K-6, TP Chathram Police Station,
Chennai - 600 026.

3.Additional Public Prosecutor,
High Court, Madras.

CRL.O.P.No.2243 of 2019

srg 14/02/2019



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