

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.02.2019

CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.2621 of 2019
and Crl.M.P.No.1691 of 2019

1.Eakambaram
2.Radhakrishnan
3.Haribabu

... Petitioners

Vs.

State rep. by
Station House Officer,
K4 Anna Nagar Police Station,
Anna Nagar, Chennai-600 040

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the dismissal order dated 28.12.2018 passed by the learned V Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.6107 of 2018 in C.C.No.3742 of 2013 and allow the petitioners to cross examine the prosecution witnesses P.W.1 to P.W.3 for cross examination.

For Petitioners: Mr.V.Patel

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

ORDER

This petition has been filed to set aside the order passed in Crl.M.P.No.3742 of 2013 dated 28.12.2018 thereby dismissing the application filed by the petitioners / A1 to A3 under Section 311 Cr.P.C. to recall PW1 to PW3 to cross examine them.

2. The learned counsel for the petitioners would submit that only due to miscommunication from the junior of the counsel on record to appear on behalf of the accused persons, PW1 was represented as no cross and also PW3 was not cross examined by the petitioners. Further, the prosecution cited the list of witnesses 1 to 8, but without examining all witnesses, after examining PW1 to PW3, now the proceedings has been completed, and the case is posted for arguments on 11.02.2019. Therefore she has sought for one more opportunity to the petitioners to cross examine the prosecution witnesses.

3. The learned Additional Public Prosecutor would submit that already on 29.10.2014, PW1 was examined, on 26.09.2018 PW2 was examined and on 10.10.2018 PW3 was examined. He further

submits that as far as PW1 is concerned, they represented no cross, however PW2 was cross examined by the accused persons. So far as PW3 is concerned, the counsel for the accused persons was not present on that day for examination of PW3 and hence not cross examined. Therefore, full opportunity was given to the accused to cross examine the witnesses. But without utilising the same, the petitioners failed to cross examine the prosecution witnesses, and at the fag end of the trial, now the accused persons have filed this petition only to drag the issue as such he sought for dismissal of this petition.

4. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the respondent.

5. On perusal of records, it is seen that on 29.10.2014, 26.09.2018 and 10.10.2018 PW1 to PW3 were examined respectively. So far as PW2 is concerned, he was cross examined by petitioners / A1 to A3. So far as PW1 and PW3 are concerned, they did not cross examine. Now the case is posted on 11.02.2019 for arguments.

6. Considering the above facts and circumstances of this case, this Court feels that the petitioners may be given one more opportunity to cross examine PW1 and PW3 alone. Therefore, the order passed by the learned V Metropolitan Magistrate, Egmore Chennai in CrI.M.P.No.6107 of 2018 on 28.12.2018 is set aside, and consequently the petitioners are directed to cross examine PW1 and PW3 on 11.02.2019 and complete the same on that day itself, on payment of cost of Rs.1,000/- (Rupees One Thousand only) each to PW1 and PW3, failing which the trial court is directed to proceed the trial in accordance with law.

7. With the above directions, this Criminal Original Petition is disposed of consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

lok

To

1.The Metropolitan Magistrate,
Egmore, Chennai.

2.-do- the Chief Metropolitan Magistrate Court,
Chennai.

WEB COPY

3.Station House Officer,
K4 Anna Nagar Police Station,
Anna Nagar, Chennai-600 040

4.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.V.Patel, Advocate, S.R.No.10289

CrI.O.P.No.2621 of 2019
and CrI.M.P.No.1691 of 2019

rrs 07/02/2019



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