

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.01.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.2449 of 2019

C.V.Madhan

... Petitioner/Accused

-Vs-

State rep by
Inspector of Police
V-6 Kolathur Police Station,
Chennai.

... Respondent/complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in Crl.M.P.No.5483 of 2018 in C.C.No.10009 of 2014 on the file of Learned V Metropolitan Magistrate, Egmore, Chennai - 600 008 and examine the correctness of the order passed in Crl.M.P.No.5483 of 2018 of 2018 in C.C.No.10009 of 2014 dated 20.12.2018 learned V Metropolitan Magistrate Court, and set aside the same.

For Petitioner : Mr.M.Ananadraj

For Respondent : Mr.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 of Cr.P.C., to recall and cross-examine PW1 to PW4.

2. The petitioner is facing trial before the Court below for an offence under Section 393 of IPC. PW1 to PW4 were examined on the side of the prosecution and since no counsel was present on behalf of the petitioner, they were not cross-examined. The petitioner thereafter filed a petition to recall these witnesses and the same was dismissed by the Court below by an order dated 20.12.2018.

3. The Court below has dismissed the petition on the ground that in spite of sufficient opportunity given by the petitioner, the petitioner has not chosen to cross-examine the witnesses. That apart, the case is at the stage of arguments and at a belated stage, present petition has been filed only with a view to drag on the proceedings.

4. This Court is not able to find any illegality or infirmity in the order passed by the Court below. The petitioner is facing serious charge under Section 393 of IPC and the cross-examination could not take place only because the counsel representing the petitioner was not present before the Court. Therefore for a fault of the counsel, the petitioner cannot be penalized. This Court is of the considered view that one last opportunity can be given to the petitioner to cross-examine the witnesses.

5. The order passed by the Court below in CrI.M.P.No.5483 of 2018 is hereby set aside. The Court below is directed to issue summons to PW1 to PW4. On the date of their appearance, the Court below is directed to provide with the deposition copy in order to enable them to refresh their memory. Thereafter, they can be subjected to cross-examination by the petitioner. It is made clear that the petitioner shall cross-examine these witnesses on the day when they appear before the Court and complete it on the same day. If for any reasons, the petitioner fails to cross-examine any of these witnesses, the petitioner shall forfeit his right to recall these witnesses in future. The petitioner is directed to pay a cost of Rs.1000/- to each of these witnesses on the day of their appearance.

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

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

ssr/ub
To

1. The Metropolitan Magistrate-V,
Egmore, Chennai - 600 008.
2. The Inspector of Police,
V-6 Kolathur Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Ananadraj , Advocate SR.No. 7941

CrI.O.P.No.2449 of 2019

A. SK (04/02/2019)