

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4380 of 2019

Vinayagam

... Petitioner

Vs

State Rep. by,
The Sub-Inspector of Police,
K-1, Sembium Police Station,
Chennai.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order passed in Crl.M.P.No.6568 of 2018 in C.C.No.3296 of 2013 dated 22.01.2019 by the learned V Metropolitan Magistrate, Egmore, Chennai in so far as dismissing the petition under Section 311 Cr.P.C for cross examination of PW1 to PW4, PW6, PW7 and PW9 and direct the learned V Metropolitan Magistrate, Egmore, Chennai to permit the petitioner to cross examine PW1 to PW4, PW6, PW7 and PW9.

For Petitioner : Mr.Shanmuga Boopathy

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

ORDER

This Criminal Original Petition has been filed to set aside the order passed in Crl.M.P.No.6568 of 2018 in C.C.No.3296 of 2013, dated 22.01.2019 on the file of the V Metropolitan Magistrate Court, Egmore, Chennai thereby, dismissing the application filed by the petitioner under Section 311 Cr.P.C to cross examination of PW1 to PW4, PW6, PW7 and PW9.

2. The learned counsel for the petitioner would submit that the petitioner is the sole accused and he was charged for the offence under Sections 341, 324 and 506(ii) of IPC in Crime No.710 of 2013. There are totally nine witnesses have been examined by the prosecution. Though, PW1 to PW4 were examined in the year 2016 and PW6, PW7 and PW9 were examined in the year 2018. The petitioner's counsel could not able to cross examine them. Therefore, he sought for one more opportunity to the petitioner to defend his case by effective cross examination. Hence, he prayed to set aside the order passed by the trial Court.

3. Per contra the learned Additional Public Prosecutor would submit that there are totally nine prosecution witnesses and the petitioner is the sole accused in this case. On 02.05.2016, PW1 and PW2 were examined and on 09.05.2016, PW3 and PW4 were examined, PW5 was examined on 21.11.2016 and PW6, PW7 and PW9 were examined in the year 2018 and now the case is posted for arguments on 22.02.2019.

4. Heard Mr. Shanmuga Boopathy, learned counsel appearing for the petitioner and Mr. M. Mohamed Riyaz, learned Additional Public Prosecutor for the respondent police.

5. The petitioner is the sole accused and he is facing trial for the offence under Sections 341, 324 and 506(ii) of IPC and now, the case is posted for arguments on 22.02.2019. It is seen from the records that PW1 to PW4 were examined in the year 2016 and PW6, PW7 and PW9 were examined in the year 2018. The learned counsel for the petitioner suffered illness and therefore they were able to cross examine the prosecution witnesses.

6. Considering the facts and circumstances of this case, this Court is inclined to give one more opportunity to defend his case by proper and effective cross examination. Accordingly, the order passed by the learned V Metropolitan Magistrate, Egmore, Chennai is hereby set aside and the petitioner is permitted to cross examine PW1 to PW4 and PW6, PW7 and PW9 on payment of necessary charges on a single day. The trial Court is directed to fix a date for cross-examination and issue summons to PW1 to PW4 and PW6, PW7 and PW9 witnesses. It is made clear that if the petitioner fails to cross-examine the above said witnesses on the day fixed by the trial Court, the learned V Metropolitan Magistrate, Egmore, Chennai is directed to proceed further with the trial, in accordance with law.

7. With the above directions, this Criminal Original Petition is allowed.

vv2/rpl

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The V Metropolitan Magistrate,
Egmore, Chennai.
- 2.The Sub-Inspector of Police,
K-1, Sembium Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

+3cc to Mr.Shanmuga Boopathy, Advocate, S.R.No.14977

Cr1.O.P.No.4380 of 2019

GMR(CO)
kak(20/02/2019)



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