

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.02.2019

CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.3566 of 2019

G.Vivekanandan

...Petitioner/Petitioner/Accused

-Vs-

State by

Inspector of Police,
Central Crime Branch, Egmore,
Forgery Wing, Team-V,
Chennai.

(Crime No. 457 of 2005) .. Respondent/Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order in CrI.M.P.No.7026 of 2018 in C.C.No.8043 of 2006 dated 25.01.2019 passed by the learned Metropolitan Magistrate for CCB & CBCID cases, Egmore, Chennai and direct the learned Magistrate to permit the recall of P.W.1 M.Thangaraj & P.W.8 R.Hemalatha for the purpose of cross examination.

For Petitioner : Mr.Sunder Mohan

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

ORDER

This Criminal Original Petition has been filed by the petitioner challenging the order passed by the Court below in Criminal M.P.No.7026 of 2018 in C.C.No.8043 of 2006 on the file of the Metropolitan Magistrate for CCB & CBCID cases, Egmore, Chennai, thereby, dismissing the petition filed by the petitioner under section 311 of Cr.P.C to recall and cross examine PW1 & PW8.

2. The learned counsel for the petitioner would submit that PW1 was cross examined as early as on 2012. In view of the fact that material questions had to be put to P.W.1 in the light of the other evidences recorded, petitioner had filed a petition to recall P.W.1 and that PW8 was not at all cross examined by the accused persons. He would further submit that the petitioner is ready to cross examine on a single day and also complete the trial within stipulated time.

3. The learned Additional Public Prosecutor would submit that the case is of the year is 2006. In fact, PW1 was cross-examined as early as on 13.12.2012. Similarly, PW8 was examined on 24.11.2014. Therefore, the petitioner was already given sufficient opportunities to cross-examine the respective witnesses. Now, the case is posted for questioning under Section 313 Cr.P.C, and at this stage the petitioner cannot be allowed to cross examine PW1 and PW8. The case is of the year 2006. Admittedly PW1 was cross examined on 13.12.2012. Though PW8 was examined on 24.11.2014, he was not cross examined by the petitioner.

4. It is seen that the Court order and other records were marked through PW1. PW8 was not cross-examined by the petitioner. Considering the facts and circumstances of the case, this Court is of the considered view that one last chance can be given to the petitioner to recall P.W.1 and cross examine PW8.

6. The order passed by the Court below in CrI.M.P.No.7026 of 2018, dated 25.01.2019 is hereby set-aside. The Court below shall summon PW1 and PW8 and the petitioner shall examine P.W.1 and cross examine PW8 on the same day when PW1 and PW8 appears before the Court. If for any reason the petitioner fails to examine PW1 and cross examined PW8 on the same day, the petitioner shall forfeit his right to recall P.W.1 and PW8 for cross examination in future. The petitioner shall pay a cost of Rs.2000/- each to PW1 and PW8 at the time when they come for giving evidence. Failing which, the learned Magistrate is directed to proceed with the trial in accordance with law.

7. This Criminal Original Petition is allowed and the Court below is directed to complete the proceedings within a period of two months from the date of receipt of copy of this order. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

lpp/mpa

To

1.The Metropolitan Magistrate,
CCB and CBCID Cases,
Egmore, Chennai.

2.-do- the Chief Metropolitan Magistrate,
Egmore.

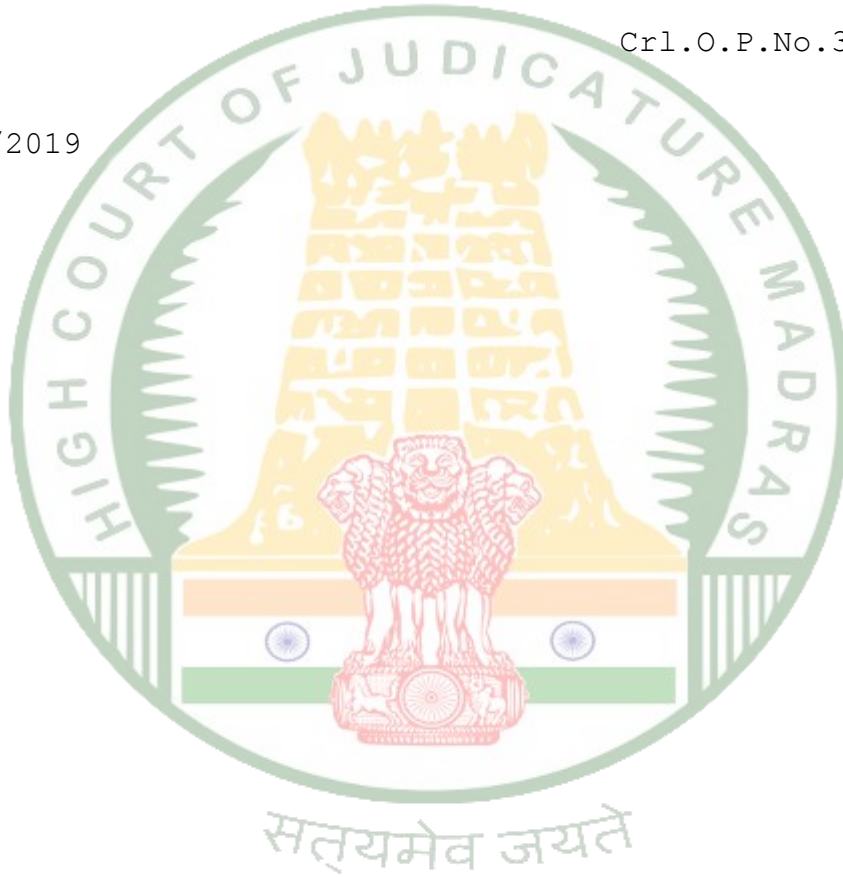
3.The Inspector of Police,
Central Crime Branch, Egmore,
Forgery Wing, Team-V,
Chennai.

4.The Public Prosecutor,
High Court of Madras.(CBI Cases).

+lcc to Mr.Sunder Mohan, Advocate, S.R.No.11665

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rrs 15/02/2019



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