

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.5637 of 2019

Palanisamy

...Petitioner

Vs.

State rep. by
Inspector of Police
Dharmapuri Town Police Station
Dharmapuri District
(Crime No. 290/2017)

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.83 of 2018 on the file of the Chief Judicial Magistrate Court, Dharmapuri and set aside the order dated 22.02.2019 dismissing the order passed in Cr.M.P.No.108 of 2019.

For Petitioner : Mr.V.Sakkarapani

For Respondent : Mr.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the petitioner under Section 482 Cr.P.C., to call for the records in C.C.No.83 of 2018 on the file of the Chief Judicial Magistrate Court, Dharmapuri and set aside the order dated 22.02.2019 dismissing the order passed in Cr.M.P.No.108 of 2019.

2.The learned counsel for the petitioner would submit that the petitioner filed a petition in Cr.M.P.No.108 of 2019 on the file of the Chief Judicial Magistrate Court, Dharmapuri U/s.311 Cr.P.C. to recall PW1 for further cross examination which was dismissed. Aggrieved by the said order, the petitioner is before this Court.

3.The learned Additional Public Prosecutor would submit that on the side of the prosecution totally 14 witnesses in C.C.No.83 of 2018 and all the witnesses have been examined in chief and cross examined by the petitioner. The petition filed by the petitioner under Section 311 of Cr.P.C. was dismissed by the

Trial Court on the ground that the petitioner has not assigned any valid reason and explanation for the delay for recall the PW1 and even without stating what is the important question omitted to be asked to the PW1 by way of recall and observation by the Hon'ble Supreme Court of India that witness has to be examined in full then and there.

4.It is also seen from the records that the PW1 was partly cross examined and the petitioner inadvertently did not cross examine PW1 fully before the Trial Court. Therefore, he wants to put forth his defence by cross examining PW1.

5.Considering the facts and circumstances of the case, this Court is inclined to give one more opportunity to the petitioner for cross examination of PW1.

6.Hence, the order passed in Cr.M.P.No.108 of 2019 by the Chief Judicial Magistrate Court, Dharmapuri dated 22.02.2019 is hereby set aside. The Trial Court is directed to issue summons to PW1 on payment of necessary charges by the petitioner and the petitioner shall cross examine PW1 on the next date of hearing in C.C.No.83 of 2018, failing which, the Trial court shall proceed further with the trial in accordance with law.

7.Accordingly, this Criminal Original Petition stands disposed of.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

kas/ssr
To

Sub Assistant Registrar

1. The Chief Judicial Magistrate,
Dharmapuri

2. The Public Prosecutor,
High Court of Madras,
Madras.

3. Inspector of Police
Dharmapuri Town Police Station
Dharmapuri District

+1 cc to Mr.V.Sakkarapani, Advocate, S.R.No.19941

Cr1.O.P.No.5637 of 2019

(CO)
SSM(05/03/2019)