

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.14998 of 2019
and Crl.M.P No.7355 of 2019

Murugan

Petitioner

vs.

State Rep. by its
The Inspector of Police,
Kolathur Police Station,
Salem District.

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.M.P.No.389 of 2019 in C.C.No.188 of 2016 on the file of the learned Judicial Magistrate No.1, Mettur and set aside the same.

For Petitioner : Mr.C.Anbarasu

For Respondent : Mr.M.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 and PW2.

2. The petitioner is facing trial before the Court below for the offences under Sections 279 and 338 of IPC. The prosecution had examined several witnesses and the case was at the stage of the examination of the investigating officer. The petitioner had cross examined all the witnesses except PW1 and PW2 who were examined on 02.07.2018 by the prosecution.

3. The Court below came to a categorical conclusion that when PW1 and PW2 were examined on 02.07.2018, the counsel made a representation, saying that there is no cross and the same was

also recorded by the Court below. Thereafter, the petitioner waited for the examination of all the other witnesses who were examined and finally chose to file an application under Section 311 of Cr.P.C. to recall PW1 and PW2. The Court below found that there was absolutely no reason for the petitioner not to cross-examine PW1 and PW2 at the initial stage itself and such practice of cross-examining important witnesses towards the end without even seeking for deferral of cross-examination, cannot be allowed by the Court. Therefore, the Court below took into consideration the conduct of the petitioner and dismissed the petition.

4. The learned counsel for the petitioner submitted that one last opportunity can be given to the petitioner to recall and cross-examine PW1 and PW2 and the petitioner is willing to abide by any condition as may be imposed by this Court.

5. This Court is able to see a pattern that is adopted in many cases which are pending trial before the subordinate Courts. The pattern is that important witnesses are not examined when they are examined in chief and the counsel goes to the extent of submitting that there is no cross. Ultimately during the end of the proceedings, a petition is filed under Section 311 of Cr.P.C. to recall the witness. This practice of seeking deferment of cross-examination which right has been given under the Cr.P.C. is not being adopted. The Hon'ble Supreme Court in a recent judgment in the case of State of Kerala Vs. Rasheed reported in (2019) 1 MLJ (Crl) 326 (SC) has already given guidelines with regard to deferral of cross-examination.

6. The Court below has rightly taken note of this pattern of not cross-examining the important witnesses without seeking for deferral of the cross-examination and attempting to recall these witnesses after a long period of time for cross-examination and has lightly held that it should never be entertained by any Court. This is one of the major reasons for the witnesses turning hostile. It is the duty of the accused person to cross-examine witnesses on the same day they are examined in Chief or within a reasonable time. They should not be permitted to recall witnesses at their will and pleasure and if such practice is not stopped, the entire trial will become a mockery.

7. This Court is not able to find any illegality or infirmity in the order passed by the Court below and there are absolutely no grounds to interfere with the same.

8. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in C.C.No.188 of 2016 within a period of two months from the date of receipt of copy of this order. Consequently,

connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssr

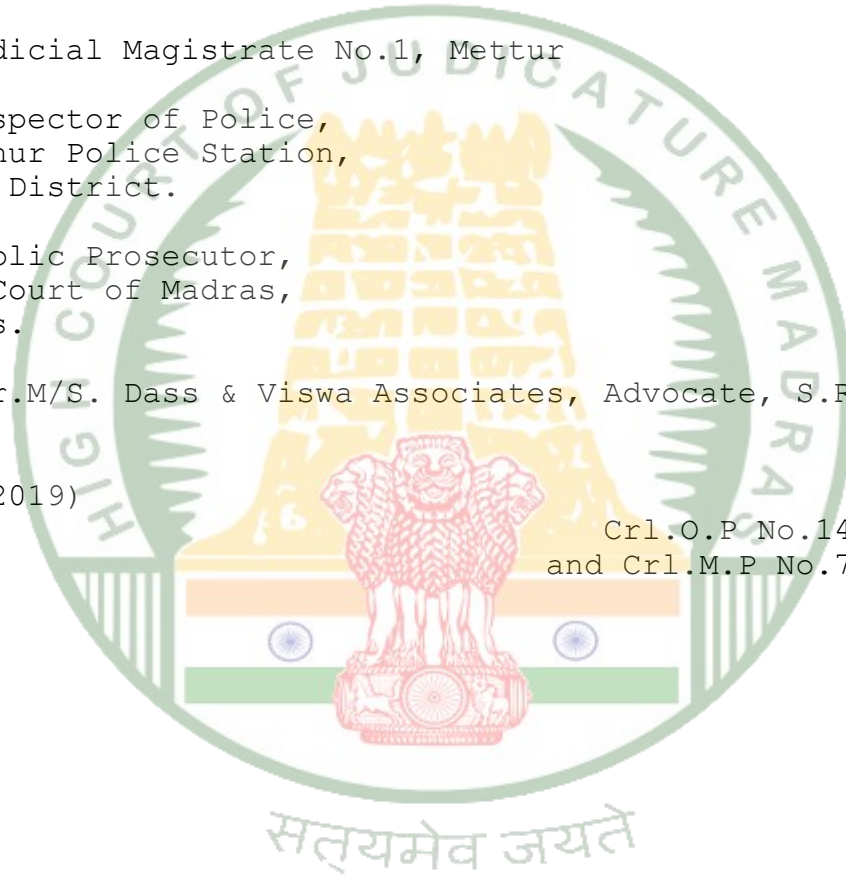
To

1. The Judicial Magistrate No.1, Mettur
2. The Inspector of Police,
Kolathur Police Station,
Salem District.
3. The Public Prosecutor,
High Court of Madras,
Madras.

+1cc to Mr.M/S. Dass & Viswa Associates, Advocate, S.R.No.47965

GP(CO)
CB(04/07/2019)

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