

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
Crl.O.P No.15136 of 2019

Silambarasan

Petitioner

vs.

State rep. by the Inspector of Police,
Tirupur North Police Station,
Tiruppur District.
Crime No.1064 of 2013

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by learned Judicial Magistrate-I, Tiruppur in Crl.M.P.No.11375 of 2018 dated 05.03.2019 made in C.C.No.93 of 2014 and direct him to recall the prosecution witness No.5.

For Petitioner : Mr.C.Ramkumar

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 application filed under Section 311 of Cr.P.C. seeking to recall PW5 for cross-examination.

2. It is seen from the records that the petitioner is facing trial before the Court below for the offences under Sections 279 and 304 (A) of IPC. The prosecution had examined seven witnesses and all the witnesses were cross examined except PW5. PW5 was examined in chief on 03.11.2015 and he was not cross-examined by the petitioner. The petitioner waited till December 2018 and filed a petition for recalling PW5 which came to be dismissed by the Court below.

3. The Court below came to a clear conclusion that

the petitioner has not availed the opportunity to cross-examine the witness on the same day, he was examined in chief. The Court also did not agree with the plea raised by the petitioner that on 03.11.2015 there was an advocate boycott and therefore, the petitioner was not in a position to cross-examine PW5.

4. The learned counsel for the petitioner submitted that PW5 is cited to be an eye witness and that one last opportunity can be given to the petitioner to recall and cross-examine PW5. The learned counsel further submitted that this Court can impose any condition and also fix a time limit for the completion of the proceedings.

5. The learned Additional Public Prosecutor submitted that there are absolutely no grounds to interfere with the order passed by the Court below and the reasons assigned by the petitioner for not cross-examining PW5 within a reasonable time is totally unacceptable.

6. This Court has carefully considered the submission made by the learned counsel for the petitioner and also perused the materials placed on record.

7. The prosecution had examined seven witnesses and all those witnesses were cross-examined by the petitioner except PW5. Admittedly, PW5 was examined in chief on 03.11.2015 and for reasons best known to the petitioner, he waited till December 2018 to file a petition to recall PW5 for cross-examination. The only reason assigned in the petition is that there was an advocate boycott on 03.11.2015 and therefore, PW5 was not cross-examined. Even if this reason is taken in favour of the petitioner, that does not in anyway justify the act of the petitioner in waiting for nearly three years to file an application to recall PW5 cross-examination.

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

9. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in C.C.No.93 of 2014 within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS)

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Sub Assistant Registrar

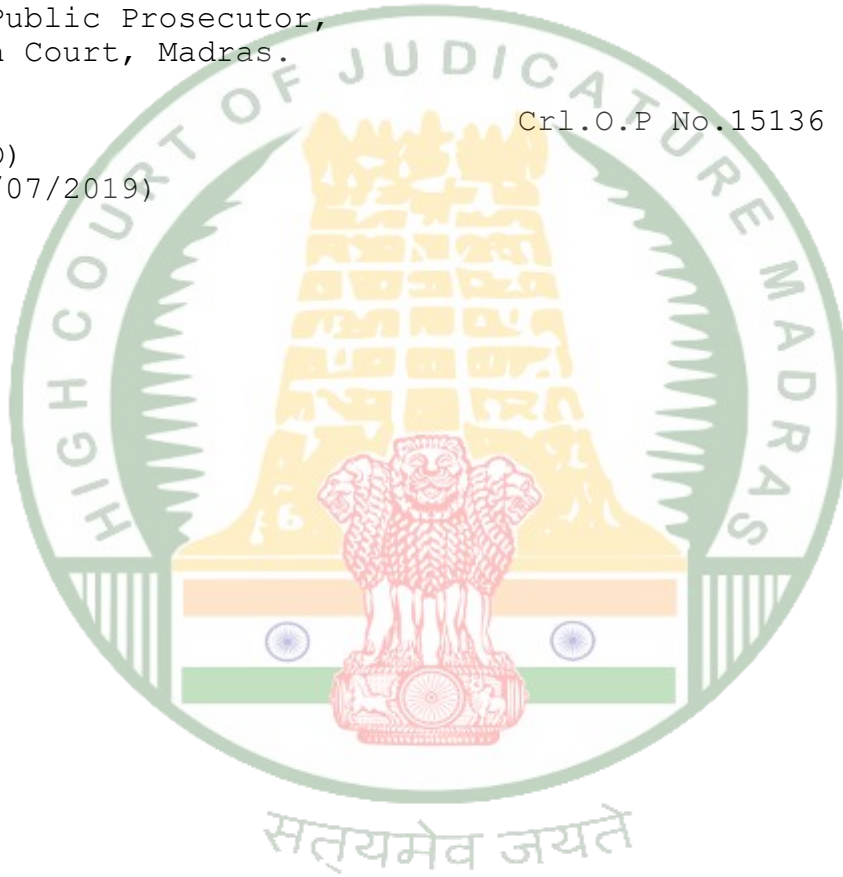
ssr

To

1. The Judicial Magistrate-I,
Tiruppur.
2. The Inspector of Police,
Tiruppur North Police Station,
Tiruppur District.
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P No.15136 of 2019

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