

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.16746 of 2019 and Crl.MP No.1324 of 2019

C.M.Ramachandran

..Petitioner /Petitioner/Sole Accused

Vs.

State Represented by
The Inspector of Police,
North Police Station,
Thiruppur District

..Respondent / Respondent /Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records and set aside the same in the order dated 27.05.2019 passed in Crl.MP No.1324 of 2019 in CC No.368 of 2018 on the file of learned Judicial Magistrate No.1, Thiruppur.

For Petitioner: Mr.Vinoth Kumar S

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

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner to recall PW.1 to PW.3 for cross-examination.

2. The petitioner is facing trial before the Court below for an offence under Section 279, 304 of IPC. The prosecution had examined PW.1 to PW.8 and the petitioner had cross-examined PW4 to PW8. However, PW1 to PW.3 who are examined in chief on 01.02.2019 were not cross-examined by the petitioner.

3. The petitioner filed an application under Section 311 of Cr.PC on 06.03.2019 seeking to recall PW1 to PW3 for cross-examination on the ground that the counsel for the petitioner was not present before the Court on the date when PW1 to PW3 were examined in Chief. The Court below dismissed the

said application on the ground that the witnesses ought to have been cross-examined on the same day in view of the guidelines given by the Hon'ble Supreme Court in Vinod Kumar .Vs. State of Punjab reported in [2015] 1 MLJ (Crl) 288 (SC).

4. The learned counsel for the petitioner submitted that the petitioner is facing serious charges before the Court below and therefore, one last opportunity may be given to the petitioner to recall and cross-examine PW.1 to PW.3. The learned counsel further submitted that the petitioner has not unnecessarily dragged on the case and the petition to recall was filed immediately and in fact, the petitioner had also cross-examined PW.4 to PW.8 without any delay.

5. The learned Additional Public prosecutor submitted that the Court below has applied its mind and has thought it fit to dismiss the application and there are no grounds to interfere with the same.

6. This Court has carefully considered the submissions made on either side and also the materials placed on record.

7. The petitioner is facing serious charges before the Court below. It is seen from records that the petitioner had cross-examined PW.4 to PW.8 and the cross-examination of PW1 to PW3 did not take place, since the counsel for the petitioner was not present before the Court. That apart, the petitioner has immediately approached the Court below to recall PW.1 to PW.3 and there is no delay on the part of the petitioner.

8. Taking into consideration the facts and circumstances of the case, this Court deems it fit to give one last opportunity to the petitioner to recall and cross-examine PW1 to PW3.

9. The order passed in Crl.MP No.1324 of 2019 dated 27.05.2019 is hereby set aside. The Court below is directed to recall PW.1 to PW.3 and fix a date for their cross-examination. On the date of their appearance, the petitioner shall cross-examine all the three witnesses and complete the cross-examination on the same day. If for any reasons, the petitioner fails to cross-examine PW.1 to PW.3 on the date of their appearance, the petitioner shall forfeit his right to recall the witnesses at a future date. The petitioner shall pay a cost of Rs.750/- (Rupees seven hundred only) to each of the witnesses on the date of their appearance. It is also made clear that the petitioner shall cross-examine all the other witness examined on the side of the prosecution, on the same day they are examined in chief.

10. In the result, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings in CC No.368 of 2018, within a period of four months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.1, Thiruppur
2. The Inspector of Police,
North Police Station,
Thiruppur District
3. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.S.Vinoth Kumar, Advocate SR.No.53830

Crl.O.P.No.16746 of 2019

GJ II (CO)
GMY (02/07/2019)

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