

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.17626 of 2019
and
Crl.M.P.No.8893 of 2019

Lalithkumar

...Petitioner

-Vs-

The State Rep. by Inspector of Police,
Mangalam Police Station,
Tiruppur.

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order passed by the learned Judicial Magistrate No.IV, Tirupur in C.M.P.No.2425 of 2019 in C.C.No.17 of 2017 dated 24.06.2019 and direct the learned Magistrate to permit the petitioner to conduct further cross examination on witness no. 4 and 5.

For Petitioner : Mr.M.Vijayakumaran
For Respondent : Mr.C.Raghavan
Government Advocate

ORDER

This petition has been filed against the order passed by the Court below dismissing the application filed under Section 311 of Cr.P.C, to recall P.W.4 and P.W.5 for further cross examination.

2.The petitioner is facing trail before the Court below for offence under sections 279, 337 and 304 (A) of IPC. The prosecution had examined five witnesses and all of them were cross examined by the petitioner. The case was at the stage of examination of defense witnesses. After the completion of questioning under Section 313 (1)(b) of Cr.P.C, the petitioner has filed an application before the Court below under Section 311 of Cr.P.C to recall P.W.4 and P.W.5 for further cross examination.

3.The Court below dismissed the petition mainly on the ground that the witnesses cannot be recalled in a casual manner

and the petitioner did not mention as to why these witnesses must be recalled for further cross examination. The Court also took into consideration the fact that the case was pending from the year 2009 onwards.

4. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent police.

5. It is seen from records that P.W.4 was examined in chief and cross examined on 25.03.2019 and P.W.5 was examined in chief and cross examined on 29.04.2019. The petition to recall P.W.4 and P.W.5 for further cross examination was filed on 20.06.2019.

6. The learned counsel for the petitioner has also produced the deposition of P.W.4 and P.W.5. The petitioner has not made any attempt to drag on the proceedings and he genuinely feels that certain important questions have not been put to P.W.4 and P.W.5 during cross examination. Therefore, in order to establish his defence, the petitioner has filed a petition to recall P.W.4 and P.W.5 for further cross examination.

7. Taking into consideration the facts and circumstances of this case, this Court is of the considered view that one last chance can be given to the petitioner to recall P.W.4 and P.W.5 for further cross examination. Therefore, the order passed in C.M.P.No.2425 of 2019 dated 24.06.2019 is hereby set aside and the Court below is directed to issue summons to P.W.4 and P.W.5 and fix a date for further cross examination. On the date of their appearance, the petitioner shall further cross examine the witnesses and complete the cross examination on the same day. If, for any reasons, the petitioner fails to cross examine the witnesses on the date of their appearance, the petitioner will forfeit his right to recall the witnesses in future. The petitioner shall pay a sum of Rs.1,000/- each as cost to each of the witnesses on the date of their appearance.

8. In the result, the Criminal Original petition is allowed and the Court below is directed to complete the proceedings in C.C.No.17 of 2017, on the file of the learned Judicial Magistrate No.IV, Tirupur, within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

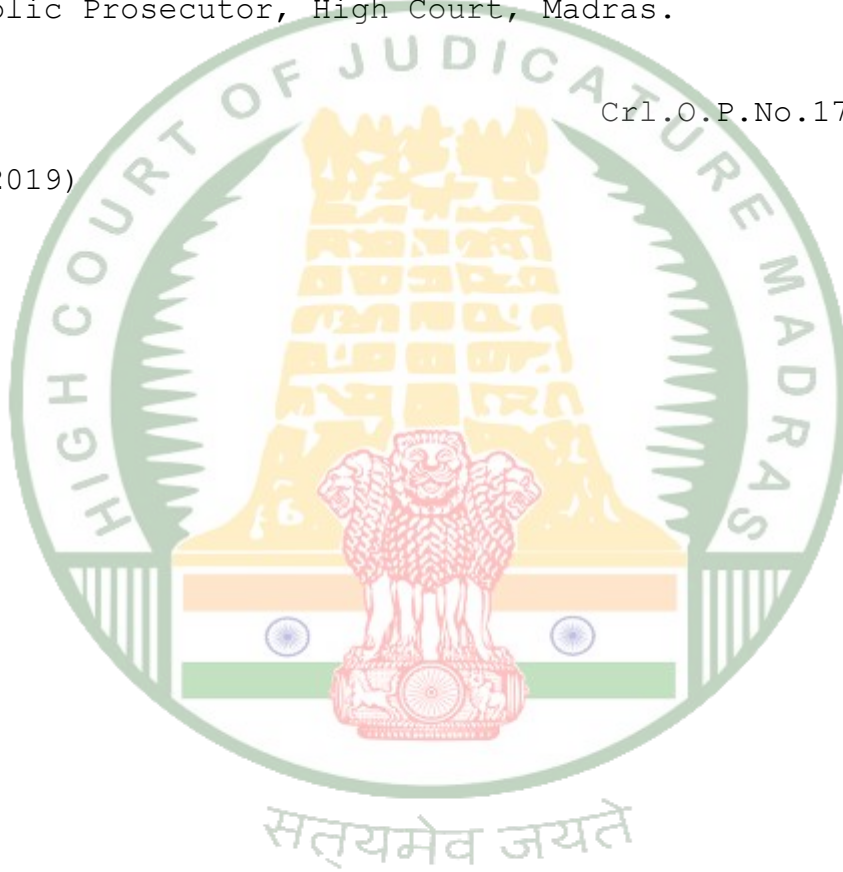
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To

- 1.The Judicial Magistrate No.IV,
Tirupur.
2. do Thro Chief Judicial Magistrate,
Tiruppur District.
- 3.The Inspector of Police,
Mangalam Police Station,
Tiruppur.
4. The Public Prosecutor, High Court, Madras.

Crl.O.P.No.17626 of 2019

MG(CO)
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