

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.17702 of 2019

1. Rajini
2. Kuppan
3. Sudhakar

... Petitioners

Vs.

State by  
The Inspector of Police,  
J-8, Neelankarai Police Station,  
Chennai District,  
Crime No.154/2014

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to set aside the order in Crl.M.P.3428 of 2019 in C.C.No.575 of 2015 dated 24.05.2019 by Judicial Magistrate, Alandur and direct the trial Court to recall PW1 & PW2.

For Petitioners : M/s.Swamidoss Manokaran.S.

For Respondent : Mr.M.Mohammed Riyaz  
Additional Public prosecutor

O R D E R

This petition has been filed challenging the order passed by the Court below in dismissing the recall petition filed by the petitioner to recall PW1 and PW2 for further cross examination.

2. The petitioners are facing trial before the Court below for the offence under Section 326, 506(ii) IPC r/w 34 IPC. The prosecution had examined eight witnesses. The petitioner cross examined those witnesses and the case was at the stage of defence witness and the questioning of the petitioner under Section 313 of Cr.P.C was also completed. At that point of time, the present petition came to be filed to recall PW1 & PW2 for further cross examination.

3. The Court below dismissed the petition on the ground that change in counsel cannot be taken as a ground for recalling the

witnesses. The Court below also took consideration of the fact that the case is pending from the year 2015 onwards.

4. The learned counsel for the petitioner submitted that questioning under section 313 of Cr.P.C is only completed and the case is at the stage of examination of defence witness and therefore one last opportunity can be given to the petitioner to recall PW1 & PW2 for further cross examination. The learned counsel further submitted that the cross examination will be completed on the same date when PW1 & PW2 appears before the Court. The learned counsel also undertakes that the petitioner will not drag on the proceedings and this Court can fix a time limit for the completion of the proceedings.

5. The learned Additional Public Prosecutor appearing on behalf of the respondent submitted that there is absolutely no merit to interfere with the order passed by the Court below and the Court below was perfectly right in dismissing the petition, since the change of counsel can never be taken as a ground for recalling any witness.

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

7. In view of the facts and circumstances of the case, this Court is inclined to give one last opportunity to the petitioner to recall PW1 & PW2 for further cross examination. The case is now at the stage of examination of the defence witness and therefore one opportunity can be given to the petitioner for further cross examination of PW1 & PW2.

8. Order passed by the Court below dated 24.05.2019 is hereby set aside. The Court below is directed to issue process to PW1 & PW2 immediately and fix a date for their further cross examination. On the date of their appearance, the petitioners shall cross examine the witnesses and complete the cross examination on the same date. If for any reason the petitioners do not cross examine the witnesses on the date of their appearance, the petitioners shall forfeit their right to recall PW1 & PW2 in future. The petitioners shall pay a cost of Rs.3,000/- (Rupees Three Thousand Only) to each of the witnesses namely PW1 & PW2 on the date of their appearance.

9. Accordingly, this criminal original petition is allowed and the Court below is directed to complete the proceedings in

C.C.No.575 of 2015, within a period of three months from the date of receipt of a copy of this order.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,  
Alandur
2. The Inspector of Police,  
J-8, Neelankarai Police Station,  
Chennai District,
3. The Public Prosecutor,  
High Court, Madras.

+1cc to M/s.Swamidoss Manokaran.S., Advocate sr.56297

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nr 08/07/2019



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