

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.18105 of 2019

and

CrI.M.P.No.9178 of 2019

1.Murugesan

2.Kandasamy

3.Rajkumari

4.Sathiyamarayanan Petitioners

-Vs-

The State, rep. by
The Inspector of Police,
Alagapuram Police Station,
Salem District.

.... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 6.3.2019 passed by the Sessions Judge, Mahila Court, Salem, Salem District in C.M.P.No.1 of 2019 in SC.No.432/2016 on the file of the Sessions Judge, Mahila Court, Salem, Salem District and to recall P.W.1 to P.W.6 only.

For Petitioners : Mr.B.Vasudevan

For respondent : Mr.M.Mohamed Riyaz
Additional Public prosecutor

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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. to recall PW1 to PW6, PW9 and PW10 for the purpose of cross examination.

2.The petitioners are facing trial before the Court below for an offence under Sections 498(A) and 306 IPC. The

prosecution had examined PW1 to PW6, PW9 and PW10 in chief. None of these witnesses were cross examined by the accused persons. The witnesses who were subsequently examined as PW11 to PW13 were cross examined on the side of the accused persons. The case was at the stage of questioning under Section 313 of Cr.P.C. At that stage the present application came to be filed to recall PW1 to PW6, PW9 and PW10.

3.The Court below dismissed the petition mainly on the ground that the defence counsel was present before the Court at the time of examination of the witnesses in chief and inspite of the same, the counsel did not cross examine the witnesses. Therefore, the Court below held that there are no reasons to again recall the witnesses.

4.The learned counsel for the petitioners submitted that they will confine the relief in this petition in so far as PW1 and PW4 are concerned and the accused persons would want to recall and cross examination these two witnesses.

5.Heard the learned Additional Public Prosecutor appearing on behalf of the respondent police.

6.Taking into consideration, the facts and circumstances of the case, even though this Court does not find any apparent illegality or infirmity in the order passed by the Court below, in view of the fact that the petitioners have now confined the relief to recall and cross examine only PW1 and PW4, this Court is inclined to give one more opportunity to the petitioners to recall these two witnesses for cross examination.

7.In view of the above, the order passed by the Court below in CrI.M.P.No.1 of 2019, dated 06.03.2019 is partly set aside, in so far as recalling PW1 and PW4 are concerned.

8.The Court below is directed to issue summons to PW1 and PW4 and fix a date for their cross examination. These witnesses shall be cross examined on the same day when they appear before the Court and the cross examination shall also be completed on the same day. The petitioners shall pay a cost of Rs.1,000/- to each of the witnesses on the date of their appearance. It is made clear that if the petitioners fail to cross examine PW1 and PW4 on the date of their appearance, the petitioners will forfeit their rights to recall the witnesses in future. It is also made clear that if any other witnesses are examined on the side of the prosecution, they shall be cross examined on the same day.

9.In the result, this Criminal Original Petition is partly allowed and the Court below is directed to complete the proceedings in S.C.No.432 of 2016 within a period of four months

from the date of receipt of a copy of this order. Consequently,
connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VIII)

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Sub Assistant Registrar

vs

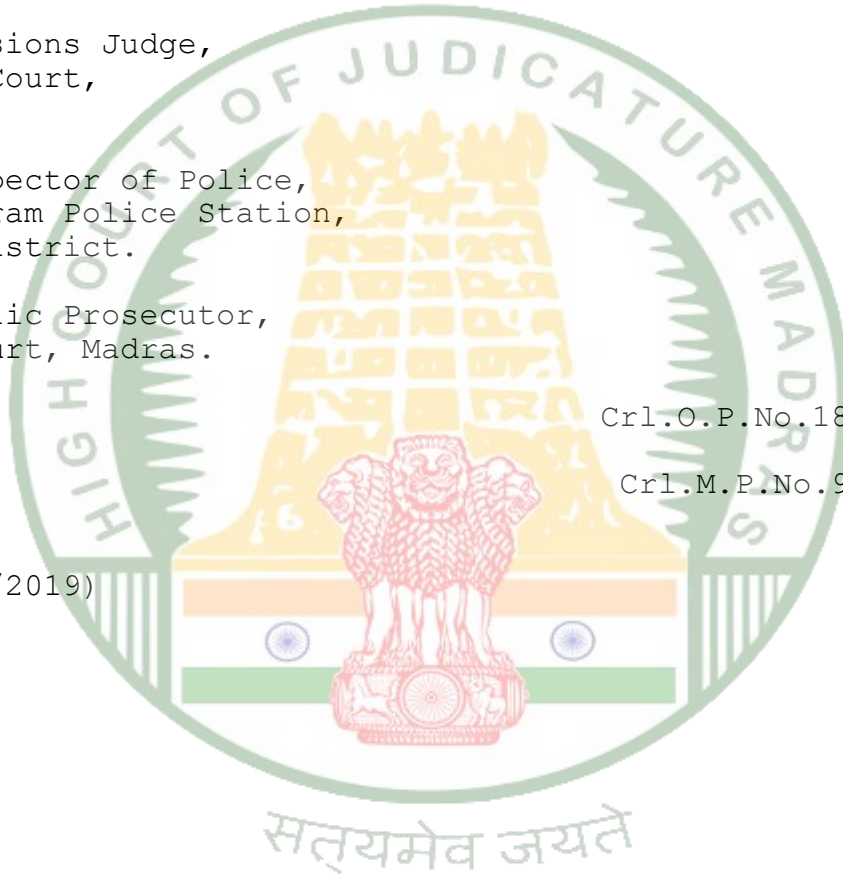
To

- 1.The Sessions Judge,
Mahila Court,
Salem.
- 2.The Inspector of Police,
Alagapuram Police Station,
Salem District.
- 3.The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.18105 of 2019
and
CrI.M.P.No.9178 of 2019

BS (CO)

RRS (12/07/2019)



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