

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.18658 of 2019
and Crl.M.P No.9491 of 2019

Suresh

Petitioner

vs.

The State Rep by
The Inspector of Police,
Perumanallur Police Station,
Tiruppur District.
(Crime No.460 of 2018)

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in CMP No.752 of 2019 in Spl.S.C.No.01 of 2019 order dated 08.07.2019 on the file of the learned Principal Sessions Judge, Tiruppur and to set aside the same.

For Petitioner : Mr.K.T.S. Sivakumar

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 by the petitioner under Section 311 of Cr.P.C. to recall PW6 (LW-10) for cross-examination.

2. The petitioner is facing trial before the court below for the offences under Sections 294(b), 323 r/w 3 (1)(r) and 3(1)(s) of TN SC/ST (POA) Amendment Act 2015. The prosecution had examined six witnesses. The petitioner cross-examined PW1 and PW5 and reported no cross-examination for PW2 and PW3. PW6 is the investigation officer who was examined in chief on 03.06.2019. This witness was not cross-examined by the petitioner and therefore his evidence was closed. The

petitioner therefore filed the application under Section 311 of Cr.P.C. to recall PW6 for cross-examination.

3. The Court below dismissed this application on the ground that the counsel for the petitioner was very much available in the Court when PW6 was examined in chief and the petitioner failed to cross-examine the witness and there was no valid reason for not cross-examining PW6 and therefore the Court below proceeded to dismiss the application filed by the petitioner.

4. The learned counsel for the petitioner submitted that one last opportunity can be given to the petitioner to recall PW6 for cross-examination since he is the investigating officer in this case.

5. The learned Additional Public Prosecutor submitted that the Court below has given cogent reasons for dismissing the application filed by the petitioner and there is no ground to interfere with the same.

6. 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 PW6. The petitioner is facing very serious charges before the Court below and he has to be given sufficient opportunities.

7. The order passed by the Court below in CMP.No.752 of 2019 is hereby set aside. The Court below is directed to issue summons to PW6 and fix a date for cross-examination. On the date of his appearance, the petitioner shall cross-examine PW6 and complete the cross-examination on the same day. If any reasons, the petitioner fails to cross-examine PW6 on the date of his appearance, the petitioner shall forfeit his right to recall PW6 in future. The petitioner is directed to pay a cost of Rs.750/- to PW6 on the day of his appearance.

8. In the result, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings in SPL.S.C.No.01 of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssr

Note: Issue Order Copy on 19.07.2019
To

1. The Principal Sessions Judge, Tiruppur.

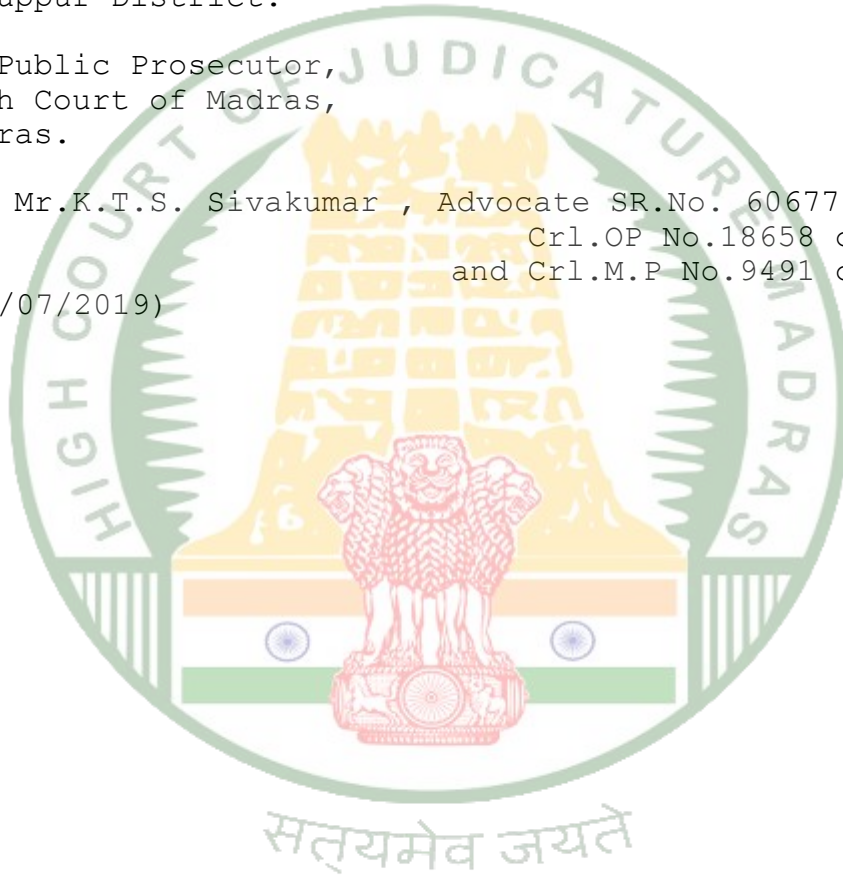
2. The Inspector of Police,
Perumanallur Police Station,
Tiruppur District.

3. The Public Prosecutor,
High Court of Madras,
Madras.

+lcc to Mr.K.T.S. Sivakumar , Advocate SR.No. 60677

CrI.OP No.18658 of 2019
and CrI.M.P No.9491 of 2019

A.SK(19/07/2019)



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