

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.21407 of 2019

K.Pugazhendhi

...Petitioner/Accused

Vs.

The Inspector of Police,
K-10, Koyambedu Police Station,
Koyambedu,
Chennai.
(Crime No.2567 of 2004)

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to set aside the order dated 19.09.2018 made in Crl.M.P.No.4623 of 2016 in C.C.No.6836 of 2005 passed by the learned V Metropolitan Magistrate, Egmore, Chennai (now pending before X.M.M., Egmore, Chennai) and to direct the X Metropolitan Magistrate, Egmore, Chennai to recall the P.W.6 for Cross examination by the petitioner's counsel.

For Petitioner: Mr.P.Manoharan

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 under Section 311 of Cr.P.C. to recall and cross examine PW6.

2.The petitioner is facing trial before the Court below for an offence under Section 392 and 506(ii) IPC. The prosecution had examined the investigating officer as PW6 on 03.08.2018. He was not cross examined on the same day and therefore the Court below closed his evidence and posted the matter for questioning under Section 313 of Cr.P.C. The petitioner therefore filed an application under Section 311 of Cr.P.C to recall PW6 for cross examination. This application was dismissed by the Court below on the ground that the petitioner ought to have cross examined PW6 on the same day and the case has been pending from the year 2005 onwards.

3.The learned counsel for the petitioner submitted that when PW6 was examined in chief on 03.08.2018, the petitioner made a request for deferring the cross examination to a different date on the ground that the counsel is not available. However, the trial Judge refused to accede to request and closed the evidence. The learned counsel submitted that some date may be fixed for the cross examination of PW6 and on the same day it will be completed.

4.The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the case has been pending for the last 14 years and the petitioner is taking his own time to cross examine witnesses. The learned counsel further submitted that the investigating officer cannot be summoned to the Court again and again and therefore, there is no ground to interfere with the order passed by the Court below.

5.Taking into consideration, the fact and circumstances of the case and also of the fact that the petitioner is facing serious charges, one last opportunity can be given to the petitioner to recall and cross examine PW6. This witness is an important witness since he is the investigating officer in this case. In the result, the order passed by the Court below in CrI.M.P.No.4623 of 2016 dated 19.09.2018 is hereby set aside. The Court below is directed to issue summons to PW6 and fix a date for his cross examination. On the day of appearance of PW6, he shall be cross examined and it shall be completed on the same day. If, for any reason the petitioner fails to cross examine PW6 on the day 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.

6.This Criminal Original Petition is accordingly allowed and the Court below is directed to complete the proceedings in C.C.No.6836 of 2005 within a period of three months from the date of receipt of copy of the order.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1.The Inspector of Police,
K-11, Koyambedu Police Station,
Koyambedu,
Chennai.
(Crime No.2567 of 2004)

2.The Public Prosecutor
High Court, Madras.

3.The X Metropolitan Magistrate
Egmore, Chennai

+1 CC to Mr.P.Manoharan, Advocate sr 67895.

CRL.O.P No.21407 of 2019

NMI (CO)
SP (12/09/2019)



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