

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.23182 of 2019

Aravinth

...Petitioner

.Vs.

The State Rep.by
R-8, Inspector of Police,
Vadapalani,
Chennai.
(Cr.No.112/2018)

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 15.04.2019 passed in Crl.MP.No.183 of 2018 in C.C.No.54 of 2018, on the file of II Addl.Special Judge for the exclusive trial of NDPS Act cases and permit the petitioner to recall PW-1 and PW-2 for the purpose of cross examination.

For Petitioner : Mr.Jerry V.V.Sundar

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner u/s 311 of Cr.P.C., to recall PW-1 & PW-2 for cross examination.

2.The petitioner is facing trial before the Court below for an offence u/s 8(c) r/w 20(b) (ii) (B) and 25 of NDPS Act, 1985. The prosecution had examined PW-1 to PW-3 on 06.06.2019. The petitioner has been ranked as A-2. The prosecution had examined two witnesses and none of these witnesses were cross examined. The petitioner therefore filed an application in Crl.MP.No.183 of 2018, before the Court below to recall PW-1 and PW-2 for cross examination. This application was adjourned from time to time since the prosecution wanted to

file a counter. Ultimately, the application itself was closed without adjudicating it on 15.04.2019, on the ground that the petitioner was not present on the date of hearing.

3.The learned counsel for the petitioner submitted that the petitioner is facing very serious charges, and therefore one last opportunity may be given to recall PW-1 & PW-2 for cross examination.

4.The learned Additional Public Prosecutor submitted that the petitioner was continuously absent for more than two hearings, and therefore the Court below had rightly closed the application and there are no grounds to interfere with the same.

5.Taking into consideration the facts and circumstances of the case, and also of the fact that the petitioner is facing very serious charges before the Court below, one last opportunity can be given to the petitioner to recall PW-1 and PW-2 for cross examination.

6.In view of the above, the order passed by the Court below on 15.04.2019, closing the application filed by the petitioner in CrI.MP.No.183 2018, is hereby set aside. The said application is restored. The Court below is directed to fix a date for the appearance of PW-1 and PW-2, and they shall be cross examined on the same day and the cross examination shall also completed on the same day. If for any reason, the petitioner fails to cross examine PW-1 & PW-2 on the date of their appearance, the petitioner will forfeit his right to recall the witnesses in future. The petitioner is directed to pay a sum of Rs.500/- to each of the witnesses on the date of their appearance. It is also made clear that the petitioner shall cross examine, on the same day, all the other witnesses to be examined on the side of the prosecution.

In the result, this Criminal Original Petition is allowed, and there shall be a direction to the Court below to complete the proceedings in C.C.No.54 of 2018, within a period of three months from the date of receipt of copy of this order.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

To

1.R-8, Inspector of Police,
Vadapalani,
Chennai.

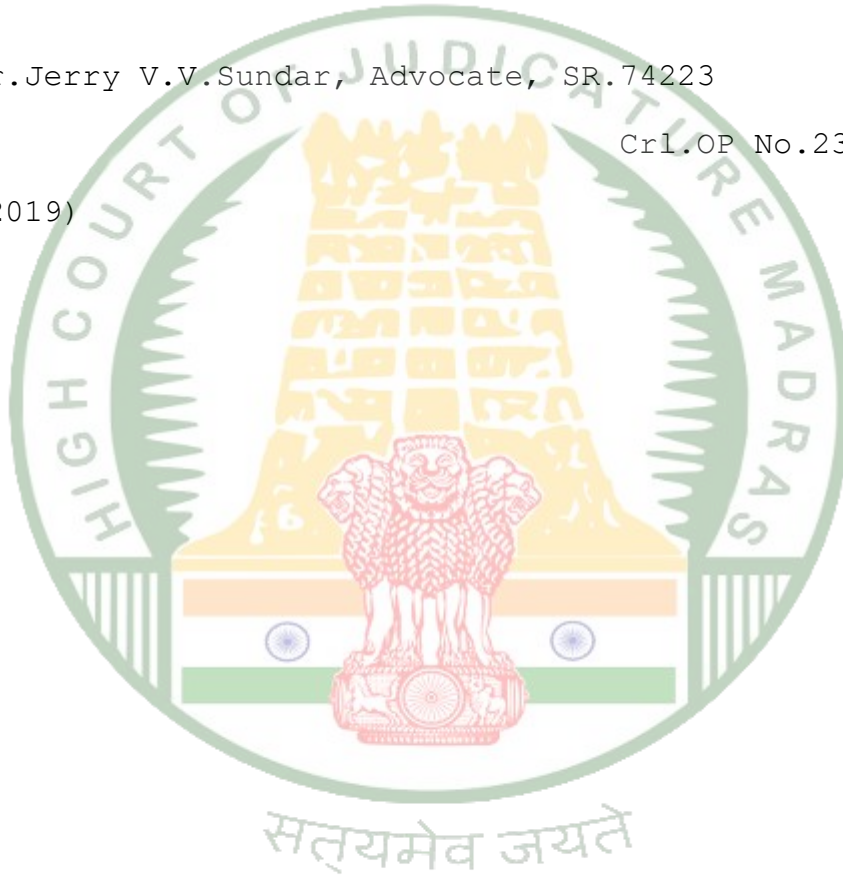
2.II Addl. Special Judge,
Exclusive trial of NDPS Act cases.

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

+1cc to Mr.Jerry V.V.Sundar, Advocate, SR.74223

Crl.OP No.23153 of 2019

GMR(CO)
CB(03/10/2019)



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