

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 10.06.2019	Delivered on 18.06.2019
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP Nos.21519 & 21520 of 2017
and
Crl.M.P.No.12655 of 2017

Dr.Sunder

..Petitioner/Accused
in both Crl.OP

.Vs.

State of Tamil Nadu
rep.by
The Inspector of Police,
K-4 Anna Nagar Police Station,
Law & Order, Chennai.

..Respondent/Complainant
in both Crl.OPs

PRAYER in Crl.O.P.No.21519 of 2017: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the learned V Metropolitan Magistrate, Egmore at Allikulam, Chennai, dated 30.08.2017 made in C.C.No.18953 of 2005.

PRAYER in Crl.O.P.No.21520 of 2017: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the learned V Metropolitan Magistrate, Egmore at Allikulam, Chennai, dated 26.07.2017 made in Crl.M.P.No.4030 of 2016 in C.C.No.18953 of 2005.

For Petitioner : Mr.S.Karthikeyan
in both Crl.OPs

For Respondent : Mr.M.Mohamed Riyaz, APP
in both Crl.OPs

COMMON ORDER

These Criminal Original Petitions have been filed challenging the order passed by the Court below dismissing the petition filed by the petitioner to eschew the evidence of PW-1 and the order passed by the Court below closing the evidence of PW-2 to PW-4.

2. The petitioner is facing trial before the Court below for the alleged offence under Section 454, 457 & 380 of IPC. The prosecution had examined four witnesses including the de facto complainant, who was examined as PW-1. None of these witnesses were cross examined and their evidence was closed. The petitioner filed an application under Section 311 of Cr.P.C., to re-call PW-1 to PW-3 for cross examination and the said application was allowed by the Court below by an order dated 27.03.2013.

3. The petitioner was taking steps to issue summons on PW-1 and the respondent Police was not able to serve it on PW-1, inspite of their best efforts and they were not able to produce PW-1 in the Court and his "whereabouts are not known". Therefore, the petitioner filed CrI.M.P.No.4030 of 2016, before the Court below seeking for the relief of eschewing the evidence of PW-1.

4. Insofar as PW-2 to PW-4 are concerned, the Court below was giving repeated opportunities to the petitioner to take steps to serve the summons on them to re-call them for the cross examination. Ultimately, the Court below closed the evidence of PW-2 to PW-4 on the ground that the petitioner did not take effective steps to pay the process fee to issue summons to PW-2 to PW-4.

5. Both the above said orders are the subject matter of the challenge in the present Criminal Original Petitions.

6. This Court will first deal with CrI.O.P.No.21520 of 2017, which pertains to the petition filed by the petitioner seeking for eschewing the evidence of PW-1.

7. The learned counsel for the petitioner submitted that PW-1 is the de facto complainant and he has to be necessarily cross examined. In spite of the best efforts of the prosecution, PW-1 is not traceable, and therefore the petitioner has now been denied the opportunity to cross examine PW-1. Hence, the evidence given by PW-1 in the chief examination cannot be put against the petitioner, and it has to be eschewed in toto. If the same is used against the petitioner, the petitioner will be put to grave prejudice. In order to substantiate his arguments, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in State of Orrissa .Vs. Prasanna Kumar Mohanty reported in (2009) 7 SCC 412 and P.Sanjeeva Rao .Vs. State of Andhra Pradesh reported in (2012) 7 SCC 56.

8. The learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that the petitioner had an opportunity to cross examine PW-1 when he was examined in chief and the petitioner did not utilise the said opportunity.

Later, the petitioner has filed a petition to re-call PW-1 for cross examination and PW-1 is not able to be traced by the respondent Police. This by itself does not make the evidence of PW-1 totally irrelevant to the case and there is no provision under the Code of the Criminal Procedure or under the Evidence Act, to eschew the evidence which has been validly recorded by a Competent Court. The learned counsel further submitted that the Court below has given sufficient reasons for not entertaining the petition filed by the petitioner and there is no ground to interfere with the same and consequently the petition must be dismissed.

9. The important issue that arises for consideration before this Court is whether the evidence recorded from a witness by a Competent Court can be eschewed at a later point of time ?

10. It will be pertinent to examine certain judgments delivered by various High Courts and the Hon'ble Supreme Court in this regard.

11. The Delhi High Court in Krishan Dayal .Vs. Chandu Ram reported in 1969 SCC OnLine Del 134 has held as follows:

"I have given the matter my consideration and am of the view that the statement of a witness in examination-in-chief, which was admissible at the time it was recorded, cannot become inadmissible by reason of the subsequent death of the witness before cross-examination. The absence of cross-examination would undoubtedly affect the value and weight to be attached to the statement of the witness, but it would not render the statement inadmissible or result in its effacement. So far as the question is concerned as to what weight should be attached to such statement made in examination-in-chief the Court has to keep in view the facts and circumstances of each individual case. Some of the factors which may be borne in mind are the nature of the testimony, its probative value, the status of the witness, his relationship or connection with the parties to the case, a likely animus which may colour his statement and any other factor touching the credibility of the witness which may emerge on the record. Regard must also be had to the fact that the witness has not been subjected to cross-examination. The Court should see whether there are indications on the record that as a result of cross-examination his testimony was likely to be seriously shaken or his good faith

or credit to be successfully impeached. The Court may also adopt a rule not to act upon such testimony unless it is materially corroborated or is supported by the surrounding circumstances. If after applying that rule of caution, the Court decides to rely upon the statement of a witness who was examined in chief, but who died before cross examination, the decision of the Court in this respect would not suffer from any infirmity".

12. The Calcutta High Court in *Azimuddy and Anr., .Vs. The King Emperor* reported in *Calcutta Weekly Notes* [Vol.XXXI] P 410, has dealt with the issue and has held as follows:

"Mr. Taluqdar's first point is that in the events which happened the deposition of the witness named Jamila Khatun could not be used at the Sessions trial as the accused had no opportunity of cross-examining this witness before she died. It appears that a few days after the date when Jamila was examined before the committing Magistrate, she died. At the time when her deposition was taken before the committing Magistrate there can be no question that the accused had the right and opportunity of cross-examining her in terms of Section 33 of the Evidence Act. The record shows that the accused did not exercise their right and did not avail themselves of the opportunity of cross-examining this witness immediately after her examination-in-chief before the committing Magistrate had been finished. That being so, having regard to the provisions of Section 33 of the Evidence Act, in my opinion, there is no substance whatsoever in this contention, and it must be negatived".

13. The Kerala High Court in *Food Inspector .Vs. James* reported in 1997 SCC OnLine P 255 has held as follows:

"5. As already noted PW 1 the Food Inspector died after examination-in-chief and there was no opportunity to cross-examine him. PW2 who is the Peon in the office of PW1 has narrated in detail with regard to the purchase of peas dhal from the shop of the respondents for analysis, sampling etc. by PW1. PW3, the owner of the shop room in which the respondents were conducting the trade has also deposed about the purchase of the article for analysis, sampling etc. by PW 1. PW4 the successor-in-office of PW 1 has deposed in conformity with

the evidence of PWs. 1 and 2 and the various documents produced in this case from his office are proved and marked through him. PW5 is the Public Analyst and PW6 is the District Food Inspector who is the local health authority in this case.

6. The Public Prosecutor vehemently argued that the evidence of PW1 along with the other evidence available on record in this case conclusively proved the offence alleged against the respondents and the lower Court is in manifest error in discarding the evidence of PW1 on the sole ground that there was no opportunity to the accused to cross-examine him. He argued that unlike in other cases generally in which the evidence of a witness who was not subjected for cross-examination, cannot be relied upon, in this case even though PW1 was available for cross-examination without subjecting him to cross-examination after his examination-in-chief, it was deferred by the respondents and unfortunately he expired before the respondents could get an opportunity to cross-examine him. Therefore, according to him since the failure of cross-examination of PW1 was due to his untimely demise prior to his cross-examination before the lower Court, his evidence is acceptable as the evidence of any other witnesses and the only question to be considered is regarding the veracity of his evidence.

7. In support of the contention that the evidence of a witness who died before cross-examination is admissible, the learned Public Prosecutor relied upon the decision in Ahmad Ali v. Joti Prasad (AIR (31) 1944 All 188) wherein a Division Bench of the Allahabad High Court has observed as follows (at page 190 of AIR):

"The plaintiffs had a commission issued to one Raj Bahadur Mathur, who went to the place and counted and measured every stump which he could find. They also produced a witness called Wazir Singh who was employed by them and who gave evidence about the number of trees which had been cut down by the defendants. Unfortunately this witness died before he could be cross-examined and it is urged on behalf of the defendants-appellants that his evidence is not admissible. There is certainly no provision in the Evidence Act that the evidence of a

witness who has been examined in open Court upon oath shall be excluded because it has not been possible for the other party to cross-examine him. The difference between rejecting evidence on the ground that it is legally inadmissible and ignoring it upon the ground that it should not be believed may often be of very little importance in practice but the distinction is important in principle because if the evidence is inadmissible the Court is not entitled to consider it at all whereas if it is admissible the Court must decide on the circumstances of each case whether any weight should be attached to it. All relevant authority and also the provisions of the Evidence Act would support the proposition that the evidence of a witness in these circumstances is admissible and the Judge who is dealing with it must decide for himself whether he believes the facts stated or does not believe them. I hold therefore that the learned Judge was entitled in this case to take the evidence of Wazir Singh into consideration and that we are not entitled to ignore it although we may, if we choose, think that it is of little value".

8. He also relied upon another decision in *Srikishun Jhunjhunwalla v. Emperor* AIR (33) 1946 Patna 384 wherein the Patna High Court has followed the above decision of the Allahabad High Court and held that where a witness dies after examination-in-chief and before cross-examination, his evidence is admissible but the degree of weight to be attached to it depends on the circumstances of the case.

9. The counsel for the respondents submitted that since PW 1 was not available and he could not be subjected to cross-examination, his evidence cannot be looked into for any purpose in this case. The proposition that unless a witness is subjected to cross-examination his evidence cannot be relied upon is well established. In the decision in *Shaikh Shurfuraz Mollah v. Shaikh Dhunoo* 16 (1871) Weekly Reporter 257 it was observed as follows :

"If a party wishes to give evidence in his own favour, of course it is in his power to come forward like any other witness and subject himself to examination and cross-examination in open Court; but until he has subjected himself

to cross-examination, no statement which he may volunteer can be used as any evidence in support of his own case, unless the right, so to use it, has accrued from the deliberate act of his adversary. A party cannot himself determine that his own statement shall be used as evidence in his favour".

10. In the decision in *Bhola Ram v. PeariDevi* AIR 1962 Patna 168 a Division Bench of the Patna High Court has held that written statement filed by one of the defendants in a suit supporting the plaintiff is of no help to the plaintiff in the absence of his statement on oath on examination in Court.

11. In decision in *Passang Lama v. State of Sikkim* (1975 CrL.J. 1350) a single Judge of the Sikkim High Court has observed as follows :

"Though the accused had wanted to cross-examine PWs. 2 and 3 but they were not made available for cross-examination, as summons could not be served on them. Thus a valuable right of the accused as given in Section 256 has been denied to them. The fact that the accused had cross-examined PWs. 2 and 3 before the charge had been framed is no reason to deny the right of cross-examination of the said witnesses after framing the charge. The accused was thus denied the right to cross-examine PW2 and PW3 and their evidence was no legal evidence and could not be relied upon".

12. The general proposition that the evidence of a witness who is not subjected to cross-examination cannot be looked into, cannot be disputed. But the question to be considered in this case is whether the evidence of PW1 who was examined in chief and was not available for cross-examination due to his death in the meanwhile, is admissible in evidence or not. The principles laid down in the decisions relied upon by the counsel for the appellant referred to above clearly establish that the evidence of a witness who could not be subjected to cross-examination due to his death before he could be cross-examined, is admissible in evidence, though the evidentiary value will depend upon the facts and circumstances of the case. Therefore, the lower Court is not at all justified in discarding the evidence of PW1 on the ground that he was not available for cross-

examination and therefore, great prejudice will be caused to the respondents if his evidence is accepted".

14. The Punjab and Haryana High Court in Ram Sarup .Vs. The State of Haryana reported in 1975 SCC OnLine P 75 has held as follows:

"8. The only provision of law, on the basis of which an incomplete statement of Shrimati Sunehri prosecutrix (P.W 1) can be held to be admissible in evidence or not, is contained in section 33 of the Indian Evidence Act. According to this section, evidence given by a witness in a judicial proceeding is relevant for the purpose of proving in a later stage of the same judicial proceeding the truth of the facts which it states when the witness is dead, provided that the proceeding was between the same parties or their representatives-in-interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine; and that the questions in issue were substantially the same in the first as in the second proceeding. Before an incomplete statement of Shrimati Sunehri (P.W) can be said to be admissible in evidence, it has to satisfy all the requirements of section 33, Indian Evidence Act, as mentioned above. One of those requirements is that the adverse party in the first proceeding had the right and opportunity to cross examine the witness. Now, in this case, excepting for that requirement, all other requirements of section 3, Indian Evidence Act, stand fulfilled as far as incomplete statement of Shrimati Sunehri (P.W 1) is concerned. Accordingly, the statement of Shrimati (P.W) which has been relied and acted upon by the Courts below is not admissible in evidence. This view of mine finds support from S.C Mitter v. The State. A.I.R (37) 1950. Calcutta 435. In that case, a prosecution witness died before his cross examination was completed. In those circumstances, it was held in that case as under:-

"I may also point out in this case that the second requirement of the proviso to the section which requires that an adverse party has had the right and opportunity to cross examine the witness has also not been fulfilled. After charge had been framed, the accused had certainly the right to cross examine the

witness. He had partial opportunity to exercise the right, but not full opportunity as the witness ceased to be available before cross-examination could be concluded.

In my opinion, what this proviso requires is that the accused must have a full opportunity of cross-examining the witness."

9. It was further held in that case as follows:-

"My conclusion, therefore, is that Sripati's evidence as recorded is not admissible under section 33, Evidence Act, and must be excluded from consideration."

10. I, in respectful agreement with the view taken up by G.N Das and Das Gupta, JJ. in S.C Mitter's case (supra), hold that an incomplete statement of Shrimati Sunehri prosecutrix (P.W) is inadmissible in evidence and, therefore, has to be excluded from consideration. In view of this finding, the evidence of Shrimati Mangti (P.W 3) and Sat Pal (P.W 4) has also to be ruled out of consideration, because they have stated about those facts which, in fact, were disclosed to them by Shrimati Sunehri (P.W 1). Hence, the evidence of all these three prosecution-witnesses, which formed basis for recording conviction of the petitioner by the Courts below, has no evidentiary value for proving the charge against the petitioner, for which he has been found guilty".

15. The Delhi High Court in Tunda Ram Dagar .Vs. State reported in 2011 SCC OnLine P 1526 has held as follows:

"24. In respect of the testimony of PW-2 who had expired before his cross-examination could be recorded, the Trial Court held that the same is not admissible in evidence. We are, however, of the view that the evidence of a witness, who dies before his cross-examination is recorded, is admissible in evidence. But, the weight to be attached to such evidence would vary and depend upon the circumstances of each case. We are supported in this view by a judgment of our own High Court in 'Krishan Dayal v. Chanu Ram, ILR (1969) 1 Del 1090, where after analyzing the judgment of Madras High Court in

Maharaja of Kolhapur v. S. Sundaram Ayyar & Ors., AIR 1925 Mad. 497 and a Division Bench judgment of Allahabad High Court in Ahmad Ali v. Joti Prasad, AIR 1944 All 188, it was held as under:-

".....I have given the matter my consideration and am of the view that the statement of a witness in examination-in-chief, which was admissible at the time it was recorded, cannot become inadmissible by reason of the subsequent death of the witness before cross-examination. The absence of cross-examination would undoubtedly affect the value and weight to be attached to the statement of the witness, but it would not render the statement inadmissible or result in its effacement. So far as the question is concerned as to what weight should be attached to such statement made in examination-in-chief the Court has to keep in view the facts and circumstances of each individual case. Some of the factors which may be borne in mind are the nature of the testimony, its probative value, the status of the witness, his relationship or connection with the parties to the case, a likely animus which may colour his statement and any other factor touching the credibility of the witness which may emerge on the record. Regard must also be had to the fact that the witness has not been subjected to cross-examination. The Court should see whether there are indications on the record that as a result of cross-examination his testimony was likely to be seriously shaken or his good faith or credit to be successfully impeached. The Court may also adopt a rule not to act upon such testimony unless it is materially corroborated or is supported by the surrounding circumstances. If after applying that rule of caution, the Court decides to rely upon the statement of a witness who was examined in chief, but who died before cross-examination, the decision of the Court in this respect would not suffer from any infirmity."

25. This view is also supported by 'Srikishun Jhunjhunwala v. Emperor, AIR 1946 Patna 384 where it was held that where a witness dies after Examination-in-Chief and before cross-examination, the evidence is admissible. The weight to be attached to such evidence

however should depend upon the facts and circumstances of each case".

16. The Hon'ble Supreme Court in Mulkh Raj Sikka .Vs. Delhi Administration reported in (1975) 3 SCC P 2 has held as follow:

"19. It is contended by the learned Counsel for the appellant that the evidence given by Dhan Bahadur in the committing court is not admissible firstly because there is no evidence to show that the witness could not be found and secondly because the appellant had no opportunity to cross-examine the witness in the committing court.

20. Section 33 of the Evidence Act provides to the extent material that evidence given by a witness in a judicial proceeding is relevant for the purpose of proving in a later stage of the same judicial proceeding the truth of the facts which it states when the witness cannot be found provided that the adverse party in the first proceeding had the right and opportunity to cross examine.

21. As regards the first part of the objection that there is no evidence to show that Dhan Bahadur could not be found, on August 23, 1971 a summons was issued for being served on Dhan Bahadur. A. S. I. Balbir Singh (P.W. 31) says that he made a search for the witness at R. K. Puram. Vasant Vihar, Anand Niketan, Shanti Niketan and in the surrounding areas but he could not find him. The only information which Balbir Singh could gather was that Dhan Bahadur had left R. K. Puram about three months ago. Balbir Singh then made inquiries from one Ram Bahadur, a resident of Nepal, but he was unable to furnish any information.

22. The High Court rightly decided to make one more attempt during the hearing of the appeal, to trace Dhan Bahadur. By an order dated December 7, 1972 the High Court directed that a high police official should be deputed for going to Nepako persuade Dhan Bahadur to present himself before the High Court for giving evidence, if at all he could be traced. The High Court took care to issue a summons also for securing the attendance of the witness in case there was a reciprocal arrangement between India and Nepal for service of processes on witnesse

in criminal cases. In pursuance of the High Court's order Vishwa Nath, the Deputy Superintendent of Police, went to Nepal and made inquiries about the whereabouts of Dhan Bahadur. Vishwa Nath who was examined in the High Court says that Dhan Bahadur could not be found in the village of Dhanuvas to which he belonged and that his brother Padam Bahadur told that Dhan Bahadur's whereabouts were not known. Thereafter an Inspector of police Rarft, Lubhaya who also was examined by the High Court as a court witness made further inquiries to trace Dhan Bahadur but could not succeed. It is clear from these facts that all reasonable steps were taken to secure the presence of Dhan Bahadur but he could not be found.

23. Regarding the second limb of the argument the record of the committing Magistrate shows that the appellant who was represented by a counsel declined to cross-examine Dhan Bahadur in, the committing court and stated that he would reserve the cross-examination of the witness for the Sessions Court. We see no substance in the appellant's contention that it was the committing Magistrate who had reserved the cross-examination of the witness for the Court of Session and that there by the appellant was deprived of an opportunity to cross-examine the witness. The decision in *State of Assam v. Ramani Mohan Chanda* AIR 1953 Assam 176 is distinguishable because in that case the High Court found after referring to the record that the accused was not given an opportunity to cross-examine a witness whose evidence before the committing court was sought to be brought on the record of the Sessions trial.

24. Counsel is right that as stated in *Dal Bahadur Singh v. Bijai Bahadur Singh* the true reading of Section 33 of the Evidence Act is that the adverse party must have both the right and the opportunity of cross-examining. Mere opportunity without the right of cross-examination cannot bring the case within the terms of Section 33. But Sections 207 and 207A of the Criminal Procedure Code show that the accused has the right to cross-examine the witnesses examined by the prosecution in the committing court. Section 207(a) provides that in every inquiry before a Magistrate where the case is triable exclusively by a Court of

Session etc. the Magistrate shall in any proceeding instituted on a police report, follow the procedure specified in Section 207A. Section 207 A (4) provides that the Magistrate shall take the evidence of such persons as may be produced by the prosecution as witnesses to the actual commission of the offence alleged. Sub-section (5) of Section 207A provides: "The accused shall be at liberty to cross-examine the witnesses examined under Sub-section (4) -". Thus the appellant had the right to cross-examine Dhan Bahadur but his counsel, as is usually done, preferred not to cross-examine the witness at that stage and reserved the cross-examination for the Sessions Court".

17. A careful reading of the above judgments brings out the following principles while considering the evidence of a witness who was not cross examined on the side of the defence.

(a) The statement of a witness who was examined in chief and which was admissible at the time it was recorded, cannot become inadmissible or cannot be scrapped by reason of his subsequent death or on the ground that his whereabouts are not known.

(b) Under Section 33 of the Indian Evidence Act, the evidence given by a witness in a judicial proceeding is relevant for the purpose of proving in a later stage of the same judicial proceeding the truth of the facts which it states when the witness is dead or cannot be found or becomes incapable of giving evidence or if his presence cannot be obtained without an amount of delay or expense, provided that the proceedings was between the same parties or their representatives in interest and that the adverse party in the proceedings had the right and opportunity to cross examine the witness and he choose not to cross examine the witness for whatever reasons. One of the most important requirement to be noted is that the adverse party should have had the right and opportunity to cross examine the witness.

(c) The evidence of a witness who could not be subjected to cross examination due to his death or his non availability, before he could be cross examined, is admissible in evidence, though the evidentiary value will depend upon the facts and circumstances of each case and a Court cannot discard the evidence which was duly recorded in a judicial proceeding. Where the accused person fails or declines, when he had an opportunity to cross examine, cannot be allowed to turn around and seek for scrapping the entire evidence at a later point of time on the ground that the witness has died or is not available for his cross examination.

(d) The preponderance of the judicial authority appears to be of the view that the chief examination of a witness who

has subsequently died or cannot be found, does not get wiped out automatically.

18. When the principles are applied to the facts of the present case, it can be seen that PW-1 was examined by the prosecution on 06.06.2012, and he was very much available for cross examination by the petitioner on the said date. However, the petitioner chose not to cross examine the witness. In other words, the petitioner had the right and opportunity to cross examine PW-1 when he was examined in chief. Later in the year 2013, after nearly one year, the petitioner chose to file a petition to recall PW-1 along with three other witnesses and the said petition came to be allowed. However, the prosecution was not able to find out the whereabouts of PW-1. This fact by itself will not efface the evidence of PW-1 recorded by the Court below while he was examined in chief. Therefore, there is no question of eschewing the evidence of PW-1 as sought for by the petitioner.

19. Insofar as the weight that should be attached to the statement made by PW-1 while he was examined in chief, is something that has to be independently considered by the Court below on the facts of the case. The Court must bear in mind the nature of testimony, its probative value, the status of the witness, his relationship or connection with the parties to the case, the likely animus which may colour his statement and other factors touching upon the credibility of the witness. The Court can also seek for corroboration from the evidence of the other witnesses. These factors will take care of the apprehension raised by the petitioner.

20. The judgments relied upon by the learned counsel for the petitioner referred supra does not directly deal with the issue on hand.

21. In view of the above, the order passed by the Court below in CrI.M.P.No.4030 of 2016 is sustained.

22. The next issue to be taken into consideration is whether the Court below was right in closing the evidence of PW-2 to PW-4 on the ground that the effective steps were not taken to pay the process fee to issue summons to the witnesses.

23. As it is, the petitioner did not get an opportunity to cross examine PW-1 since his whereabouts are not known. This Court has already held here in above that the evidence of PW-1 is admissible and the same cannot be eschewed subject to its probative value. Therefore, the petitioner must be given an opportunity to cross examine PW-2 to PW-4 since the application filed by the petitioner to recall PW-2 to PW-4 was already allowed by the Court below. The cross examination of these

witnesses will have a bearing while the Court considers the probative value of the evidence of PW-1 and in order to test whether the evidence of PW-2 to PW-4 corroborates the testimony of PW-1.

24. In view of the above, the order passed by the Court below dated 30.08.2017, is hereby set aside.

25. The petitioner is directed to take steps by paying the necessary process fee to issue summons to PW-2 to PW-4, to recall them for the purpose of cross examination.

26. In the result, Crl.O.P.No.21520 of 2017, is dismissed and Crl.O.P.No.21519 of 2017 is hereby allowed. The Court below is directed to complete the proceedings within a period of four months from the date of receipt of copy of the order. It is made clear that the petitioner shall cross examine all the other witnesses on the same day when they are examined in chief and no unnecessary adjournments should be granted in this case and the guidelines given by the Hon'ble Supreme Court in Vinod Kumar .Vs. State of Punjab reported in [2015] 1 MLJ (Crl) 288 (SC), shall be strictly followed.

Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

KP

To

1.The V Metropolitan Magistrate,
V Metropolitan Magistrat Court,
Egmore at Allikulam, Chennai.

2.The Inspector of Police,
K-4 Anna Nagar Police Station,
Law & Order, Chennai.

3.The Public Prosecutor,
High Court, Madras.

Crl.OP Nos.21519 & 21520 of 2017

KK(CO)

RRS (10/07/2019)