

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.26492 of 2019

Santhosh Kumar

...Petitioner/Accused 1

Vs

State by Inspector of Police,
D-5 Palur, Police Station,
Kancheepuram District

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the order dated 12.03.2019 passed in Crl.M.P.No.2101 of 2019 in S.C.132 of 2015 on the file of the Chief Judicial Magistrate, Chengalpattu, set aside the same.

For Petitioner : Mr.K.Sudalaikannu

For Respondent : Mr.C.Iyyapparaj

Additional Public Prosecutor

O R D E R

The petitioner's application under Section 311 Cr.P.C was rejected on the ground that the petitioner failed to cross examine the witnesses on the day when they were examined in Chief and inspite of the opportunities, they have not chosen who cross examine the witnesses.

2.The learned counsel for the petitioner would submit that on the day of the chief examination, the counsel was engaged in some other Court and he could not cross examine the witnesses within a reasonable time, the application under Section 311 Cr.P.C was filed in Crl.O.P.No.222 of 2019. In this background, the learned counsel would seek for a lenient view to be taken in order to permit examination of atleast five witnesses out of the total witnesses.

3.The learned Additional Public Prosecutor submitted that the case is under the stage of arguments, after questioning under Section 313 Cr.P.C. At this belated stage, it would not be appropriate to permit the petitioner to cross examine the witnesses which would cause further delay in proceedings.

4. On perusal of the rejection order of the trial Court, it cannot be said that there is any infirmity in the order. As a

matter of fact, the trial Court was justified in observing that the cross examination has to be conducted on the same day when the examination in chief is made.

5. Nevertheless, since the offences involved in the present case are under Sections 394 r/w 397 IPC and the punishment being severe in nature and also by taking into account that the petitioner had not cross examined the witnesses earlier and now seeks to cross examine only five witnesses namely, PW1, 2, 3, 11 and 15, this Court is inclined to take a lenient view on the matter. Further more, if the cross examination of these five witnesses are restricted to be completed within a period of one week, the ends of justice could be secured.

6. In the light of the above observations, the impugned order dated 12.03.2019 passed in CrI.M.P.No.2101 of 2019 in S.C.No.132 of 2015 on the file of the learned Chief Judicial Magistrate, Chengalpattu is set aside. Consequently, the trial Court shall permit the petitioner herein to cross examine PW1, 2, 3, 11 and 15 and complete the same within a period of one week from the date of receipt of a copy of this order.

7. The petitioner shall also pay costs of Rs.2,000/- each to all the witnesses (totally amounting to a sum of Rs.10,000/-) and produce proof of such payment before the trial Court, prior to the cross examination.

8. The Criminal Original Petition stands ordered accordingly.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsn/dna

To

The Inspector of Police,
D-5 Palur, Police Station,
Kancheepuram District

+1cc to Mr.L.Shanmugasundram , Advocate SR.No. 94365

CrI.O.P.No.26492 of 2019

A.SK(18/12/2019)