

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.25574 of 2017

Kumar

... Petitioner

Vs.

State by Inspector of Police,
Mettur,
Salem District.

... Respondent

Prayer: This Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order in C.M.P.No.2590 of 2017 in C.C.No.44 of 2014 direct the learned Judicial Magistrate No.I, Mettur to permit the petitioners to recall the witnesses.

For Petitioner : Mr.B.Mahendra Naidu

For Respondent : Mr.Mohamed Riyaz
Addl. 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 by the petitioner to re-call P.W.1 to P.W.3 for Cross-examination.

2. It is seen from the records that P.W.1 to P.W.5 were examined on 24.08.2015. However, they were not cross-examined by the petitioner. Subsequently, P.W.6 to P.W.9 were examined on 15.09.2015 and they have been cross-examined by the petitioner. Similarly P.W.10 was also cross-examined. Thereafter, P.W.11 and P.W.12 who were examined on 25.01.2016 but were not cross-examined by the petitioner. P.W.13 was also examined on 27.09.2016. The evidence on the side of prosecution was closed on 27.07.2016. Thereafter, the petitioner has chosen to file the present petition under Section 311 of Cr.P.C to recall P.W.1 to P.W.3 for cross-examination. This petition has been dismissed by the Court below mainly on the ground that the petitioner had cross-examined the witnesses according to his own whims and fancies and there was absolutely no reason given by the petitioner as to why P.W.1 to P.W.3 were not cross examined then

and there and as to why the petitioner took such a long time to re-call P.W.1 to P.W.3 for cross-examination. The Court below also took into consideration the fact that there will be discrepancy in the evidence of P.W.1 to P.W.3 if they are again recalled after such a long time, since the memory would have faded about the incident.

3. When this case came up for admission, this Court did not grant any stay of the proceedings and the case has been pending till date.

4. The learned Additional Public Prosecutor on instructions submitted that the petitioner did not appear before the Court below and therefore, a Non Bailable Warrant was issued against him on 15.03.2019 and the case is now posted for hearing on 21.06.2019.

5. This Court does not find any illegality or infirmity in the order passed by the Court below and the Court below was perfectly right in dismissing the petition to re-call the witnesses. At this point of time, in a case of rash and negligent driving, it will give rise to lot of contradictions due to loss of memory on the part of the witnesses. This is the reason, Courts are insisting that the witnesses will have to be cross-examined then and there and recalling and cross-examining them after a lapse of time will make the evidenciary value of the witnesses very shaky due to loss of memory resulting in contradictions on the facts. It will be taken advantage by the accused persons during trial and the Hon'ble Supreme Court in order to bring to an end this practice, had categorically held in Vinod Kumar Vs State of Punjab, reported in 2015 (3) SCC 220 that the witnesses will have to be cross-examined on the same day they are examined-in-chief.

7. In the result, the Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in C.C.No.44 of of 2014, within a period of three months from the date of receipt of a copy of this order.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

vv/kal

To

1. The Judicial Magistrate No.I,
Mettur.

2. -do- thro' The Chief Judicial Magistrate,
Salem.

3. The Inspector of Police,
Mettur,
Salem District.

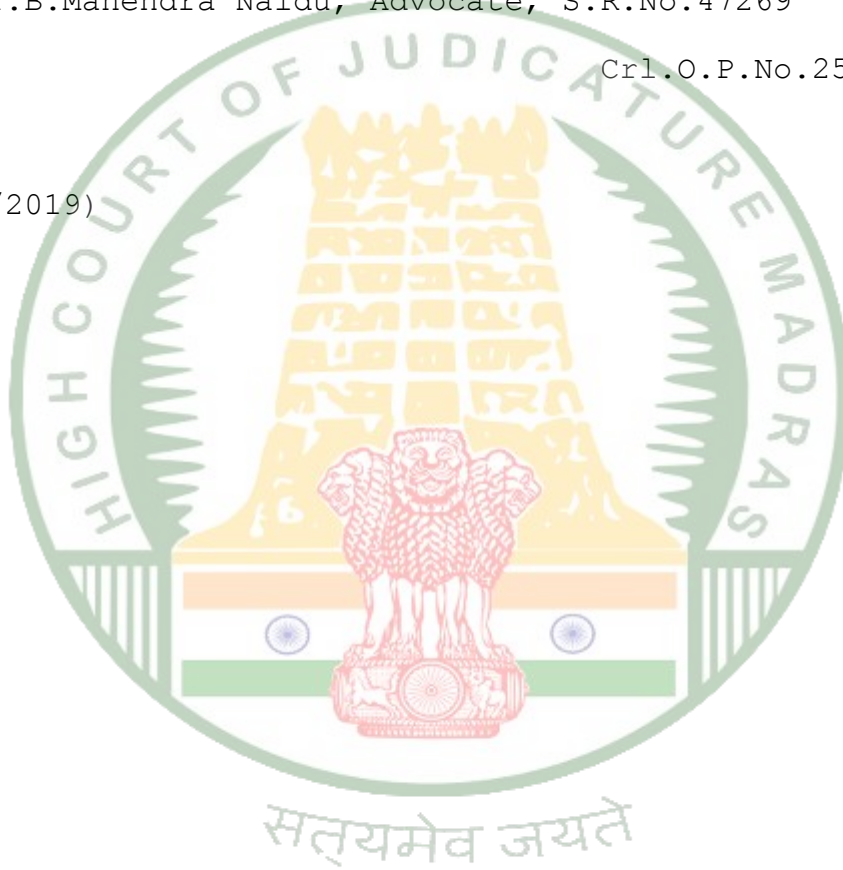
4. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.B.Mahendra Naidu, Advocate, S.R.No.47269

Crl.O.P.No.25574 of 2017

VD(CO)

RRS(16/07/2019)



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