

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 02.01.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.29759 of 2018  
and Crl.M.P.No.17445 of 2018

1. Venkataramanujam

2. Sharmila

... Petitioners

-Vs-

State by

The Inspector of Police,  
F-5, Choolaimedu Police Station,  
Crime, Chennai.

Crime No.1522 of 2013

... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to set aside the order passed by the Learned XVII Metropolitan Magistrate Court at Saidapet, Chennai in Crl.M.P.No.8048 of 2018 dated 08.11.2018 and allow the petition to recall witnesses in the above C.C.No.5056 of 2015 pending before Learned XVII Metropolitan Magistrate Court at Saidapet, Chennai.

For Petitioners: Mr.M.Jaikumar

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 petition filed under Section 311 of Cr.P.C. for recall and cross-examination of PW1 to PW11.

2. The petitioners are facing trial before the Court below for an offence under Sections 406, 420, 379 and 506 (i) of IPC. The prosecution has examine 11 witnesses and none of these witnesses were cross-examined by the petitioners. The Court below has dismissed the petition on the ground that the petitioners have not given any valid reason for not cross-examining any of the witnesses and the petition itself has been filed only to drag on the proceedings.

3. The learned counsel would submit that the dispute is purely civil in nature and the petitioners already filed discharge petition before the Court below and the same was dismissed. As against the same, the petitioner filed a Criminal Revision before this Court and the same is pending in Criminal Revision No.1450 of 2017. In the mean time, the Court below has proceeded to examine 11 witnesses.

4. When this matter came up for hearing during the last occasion, this Court was not inclined to permit the petitioners to recall all the witnesses and directed the petitioners to choose the important witnesses who will have to be cross-examined. Today, an affidavit has been filed before this Court and the learned counsel for the petitioners submitted that the petitioners may be permitted to recall and cross-examine of PW2, PW7 and PW11. The learned counsel also submitted that these witnesses will be cross-examined on the same day they appear before the Court. The learned counsel also requested this Court to impose any reasonable cost payable to the witnesses.

5. In the facts and circumstances of the case, this Court is inclined to give one last opportunity to the petitioners to recall and cross-examine three witnesses. The order of the Court below made in CrI.M.P.No.8048 of 2018, dated 20.11.2018, is hereby set aside. The Court below is directed to issue summons to PW2, PW7 and PW11. The petitioners shall cross-examine these witnesses on the same day they appear before the Court. The Court below shall permit these witnesses to go through the depositions made by them in order to refresh their memory. If for any reason the petitioners fail to cross-examine any of these witnesses on the day they appear before the Court, the petitioners shall forfeit their right to recall these witnesses in future. The petitioners shall pay a cost of Rs.2,500/- to each of the witnesses on the day when they appear before the Court.

6. Accordingly, this Criminal Original petition is partly allowed to the extent indicated herein above and the Court below is directed to complete the proceeding within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The XVII Metropolitan Magistrate Court,  
Saidapet.

2. do thro' Chief metropolitan Magistrate , Chennai.

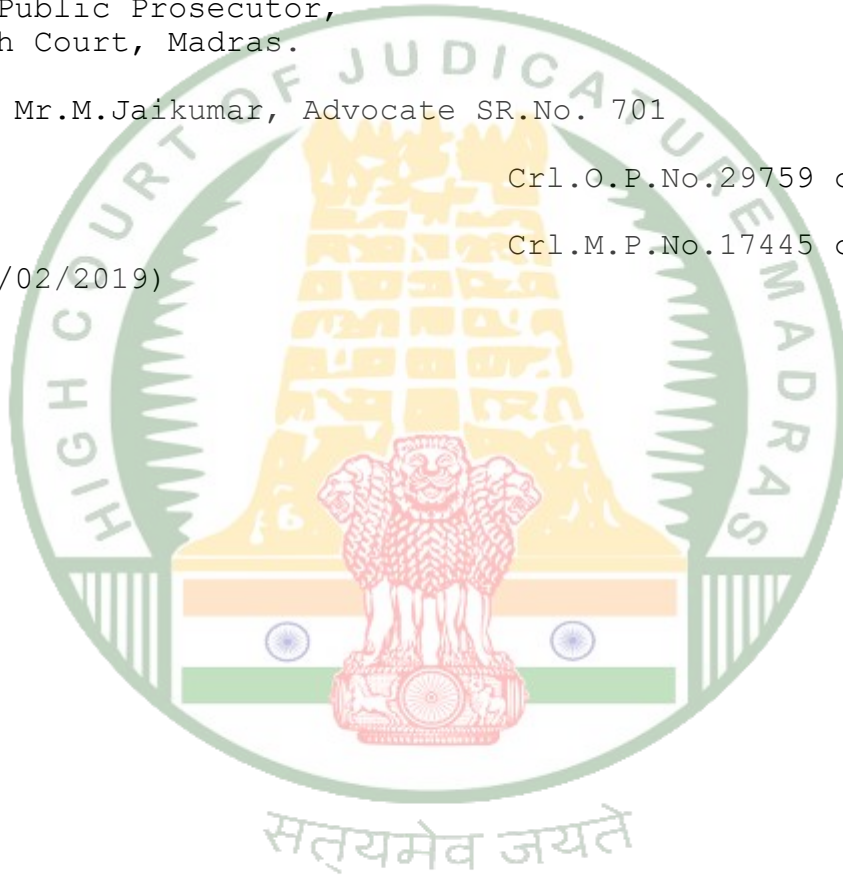
3. The Inspector of Police,  
F-5, Choolaimedu Police Station,  
Crime, Chennai.

4. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.M.Jaikumar, Advocate SR.No. 701

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and  
CrI.M.P.No.17445 of 2018

A.SK(11/02/2019)



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