

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

CRL.O.P.No.3663 of 2020

and

Crl.M.P.No.2196 of 2020

J.Eliyesar

....Petitioner/Accused

Vs.

State Rep.by

Inspector of Police

Makundanchavai Police Station

Salem District.

.... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 24.01.2020 made in Crl.M.P.No.3439 of 2019 in C.C.No.128 of 2015 on the file of the learned Judicial Magistrate No.II, Sankari by allowing the present Criminal Original Petition.

For Petitioner : Mr.B.kumarasamy

For Respondent : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the accused to set aside the order passed by the Judicial Magistrate No.II at Sankari, Salem District in Crl.M.P.No.3439 of 2019 in C.C.No.128 of 2015 dated 24.01.2020.

2. The learned counsel for the petitioner has submitted that the petitioner is facing trial for the alleged offences under Sections 279 and 304(A) IPC. He further submitted that on 09.03.2017 PWs 1 and 2 were examined in chief and on that date, the petitioner's previous counsel did not cross examine the said witnesses. He further submitted that on 09.03.2017 itself PW3 was examined and on 20.06.2017 PW5 was examined and though the aforesaid two witnesses were cross examined on the same day, some of the vital questions were omitted to be asked during cross examination and hence, the petitioner has filed a petition under Section 311 of Cr.P.C., in Crl.M.P.No.3439 of 2019 on 17.12.2019. He further submitted that the aforesaid witnesses are material witnesses but without considering the same, the learned Judicial Magistrate No.II, Sankari has dismissed the said petition without giving an opportunity to the petitioner to

cross examine the said witnesses and therefore, he prayed to set aside the order passed by the trial Court in CrI.M.P.No.3439 of 2019 in C.C.No.128 of 2019 dated 24.01.2020 and permit the petitioner to cross examine the aforesaid witnesses.

3. Per contra, the learned Additional Public Prosecutor has submitted that the petitioner has not stated any valid reason for not cross examining PWs 1 and 2 when they were examined before the trial Court. He further submitted that PWs 3 and 5 were elaborately cross examined on behalf of the petitioner. He further submitted that eventhough the aforesaid witnesses were examined in the year 2017 after a lapse of two years, the petitioner has filed a petition under Section 311 of Cr.P.C., to recall the aforesaid witnesses and taking into consideration of the aforesaid facts, the trial Court has rightly dismissed the petition and in the said order, this Court need not interfere.

4. Though the petitioner has not stated any valid reason for not cross examining PWs 1 and 2 and also for further cross examination of PWs 3 and 5, considering the charges being faced by the petitioner and also the aforesaid witnesses are material witnesses, this Court is inclined to allow this petition by imposing conditions.

5. In the result, this petition will be allowed on deposit of Rs.10,000/- (Rupees Ten Thousand only) towards expenses to P.Ws 1, 2, 3 and 5 before the trial court on or before 28.02.2020, failing which, this petition shall stand dismissed without further reference to this court. If the petitioner complied the aforesaid condition within the stipulated time, the learned Judicial Magistrate is directed to recall P.Ws 1, 2, 3 and 5 and permit the petitioner to cross examine the said witnesses. The petitioner shall cross examine the said witnesses on the date of their appearance before the trial court without seeking adjournments. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II, Sankari.

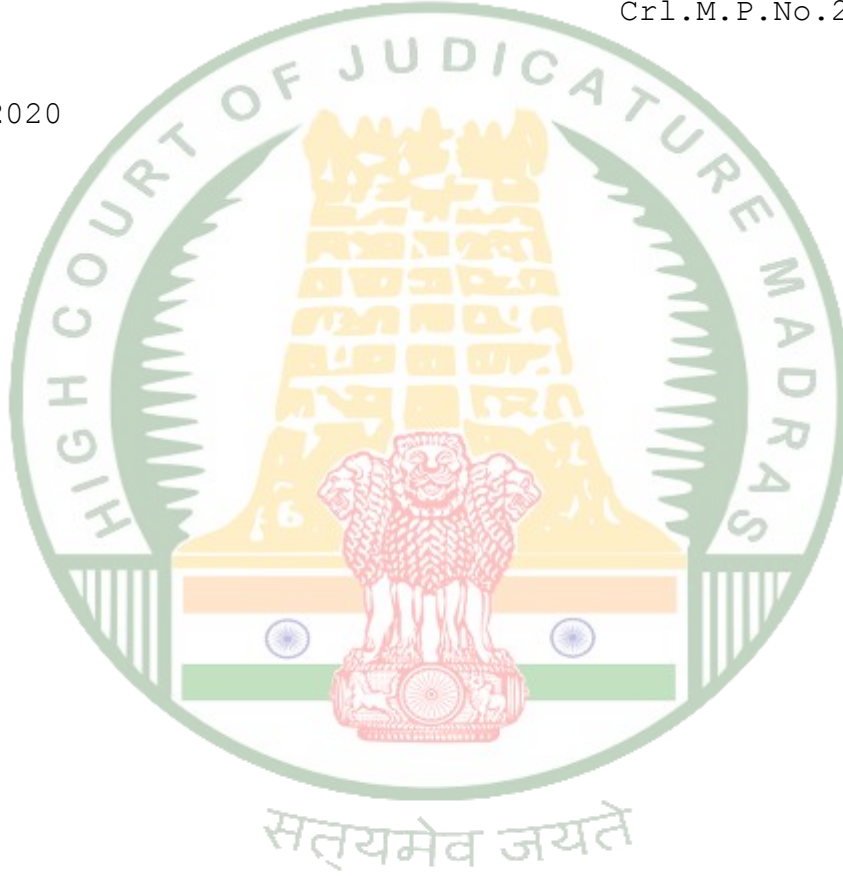
2.The Inspector of Police
Makundanchavai Police Station
Salem District.

3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.B.Kumarasamy, Advocate sr.14883

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