

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No. 5873 of 2020
and
Crl.M.P.No.3328 of 2020

1.Aktar Hussain

2.Saju Begum

3.Zazir Hussain

4.Jabir Hussain

... Petitioners

Vs

The State Rep by
The Inspector of Police,
W-23, All Women Police Station,
Royapettah,
Chennai-14.

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order of the learned XVIIIth Metropolitan Magistrate dated 05.02.2020 in CMP.No.3694 of 2019 in C.C.No.2594 of 2017.

For Petitioners: M/s.Shah and Shah

For Respondent : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed challenging the order passed in CMP.No.3694 of 2019 in C.C.No.2594 of 2017 dated 05.02.2020, thereby dismissing the petition filed by the petitioner under Section 311 of Cr.P.C. to recall P.W.1 to P.W.3 and P.W.6 for the purpose of cross examination.

2. The learned counsel for the petitioner submitted that the witnesses have been examined by the prosecution and due to the inconvenience of the learned counsel appearing for the petitioner, while examining P.W.1 in chief, the petitioner could not cross-examine P.W.1 to P.W.3 and P.W.6, on the date of chief examination itself. Therefore one more opportunity may be given to the petitioner to put fourth his defence. Therefore, he prays to allow this petition.

3. The learned Additional Public Prosecutor would submit that all the witnesses have been examined in the year 2019 itself and investigation officer is also examined. Thereafter, the case is posted for examination under Section 313 of Cr.P.C. Hence, he prayed for dismissal of this petition.

4. Heard M/s.Shah and Shah, the learned counsel for the petitioners and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor for the respondent.

5. It is seen that the P.W.1 to P.W.3 and P.W.6 were examined in the year 2019 and the matter is posted for 313 of Cr.P.C questioning. In the meantime the petitioners filed a recall petition, therefore, the learned XVIII Metropolitan Magistrate dismissed the recall petition.

6. Considering the facts and circumstances of the case, this Court feels that the petitioner may be given one more opportunity to put fourth his defence. Accordingly, the order dated 05.02.2020, passed by the learned XVIII Metropolitan Magistrate in CrI.M.P.No.3694 of 2019 in C.C.No.2594 of 2017, is hereby set aside and the petitioner is permitted to cross examine the witnesses viz., P.W.1 to P.W.3 and P.W.6, on the next hearing date by payment of necessary charges. If the petitioner failed to cross-examine P.W.1 to P.W.3 & P.W.6, the trial Court is directed to proceed with trial in accordance with law.

7. With the above directions, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

2.The Inspector of Police,
W-23, All Women Police Station,
Royapettah, Chennai-14.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Shah & Shah, Advocate, SR. No. 22775

CrI.O.P.No.5873 of 2020

MG (CO)

RMP (20/07/2020)

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