

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl OP.No.19432 of 2020

and

Crl.M.P. No.7802 of 2020

S. Siva

S/o. K. Sellasamy

....Petitioner

Vs.

The Inspector of Police
CCB Vth Police Station
Commissioner of Police Wing
Vepery, Chennai
Crime No.171/2016

...Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records of relating to the petition for recall PW1 Tmt. Vijayalakshmi to further cross examination U/s. 311 Cr.PC CMP No.589 of 2020 in CC No.1275 of 2017 order dated 28.10.2020 on the file of the Judicial Magistrate Court at Alandur, Chennai 600 016 and allow this petition and set aside the same.

For Petitioner

: Mr. K. Ashok Kumar

For Respondent

: Ms. M. Prabhavathi

Additional Public Prosecutor

ORDER

Assailing the order dated 28.10.2020 in CMP No.589 of 2020 in CC No.1275 of 2017 on the file of the Judicial Magistrate Court No.1, Alandur (FAC), Chennai 600 016, the petitioner has preferred this Criminal Original Petition.

2. The Crl. M.P. No.589/2020 has been preferred by the petitioner under section 311 Cr.PC to recall P.W.1. The only reason given by the petitioner for recalling P.W.1 is that the High Court in Crl.M.P. No.17865/2018 in Crl. RC No.951/2018 vide order dated 17.01.2019 has held that the petitioner is permitted to raise all the grounds available to him before the trial court and based on the said observation, the abovesaid petition has come to be laid by the petitioner to recall P.W.1 for further cross examination. It is further noted that during the course of enquiry, on being questioned by the court below, it was represented by the petitioner that he requires the recalling of P.W.1 to question about some documents. However, with reference to which document he seeks to cross examine P.W.1, no document has been filed by the petitioner along with the petition or during the course of hearing.

3. The respondent resisted the abovesaid petition preferred by the petitioner by contending that P.W.1 had been already cross examined by the petitioner in extenso and the present petition has been laid by the petitioner only to delay the proceedings and accordingly sought for the dismissal of the same.

4. The case registered against the petitioner had been taken on file on 19.12.2017 for the offences punishable under Sections 420, 465, 466, 467, 468, r/w 471 IPC and thereafter after framing the charges, it is noted that P.W.1 was examined and cross examined by the petitioner elaborately on 20.04.2018. Subsequently, P.Ws.2 to 4 were examined and it also noted that direction had been given by the High Court to the Court below to dispose of the case within a period of six months in Crl.RC No.951/2018 by order dated 27.08.2018. The petitioner, in the meanwhile, has preferred Criminal Original Petitions before the High Court seeking for a direction to quash the case laid against him in CC No.1275/2017 on the file of Judicial Magistrate Court No.I, Alandur (FAC). The Criminal Original Petitions preferred by the petitioner have been dismissed. The petitioner has also preferred another Criminal Original Petition seeking for a direction to the court below to take the discharge petition preferred by him on file knowing fully well that his discharge petition had already been taken on file in CMP No.733/2018 and subsequently after enquiry, the same had come to be dismissed by the court below and the said order had been confirmed by the High Court in Crl. RC No.951/2018. While disposing RC No.951/2018, the observation had been made by the High Court that the petitioner is also permitted to raise all the grounds available to him before the trial court. On that basis, as above noted, the present petition has been laid by the petitioner to recall P.W.1.

5. With the closure of the prosecution evidence, the proceedings under Section 313 CR.PC was done and at this stage, the present petition has been preferred by the petitioner.

6. As rightly held by the court below, when the petitioner has already cross examined all the prosecution witnesses in detail, particularly, with reference to the grounds raised by him in the discharge petition, in such view of the matter, as rightly held by the court below, the reason adduced by the petitioner for recalling P.W1 cannot at all be sustained and as rightly further held by the court below, the recalling of the witnesses cannot be at the instance of the accused at his whims and fancies and only on tenable ground the witnesses could be recalled.

7. Considering the abovesaid factors in toto, the court below had proceeded to dismiss the petition preferred by the petitioner under Section 311 Cr.PC.

8. Considering the impugned order passed by the court below and as rightly concluded by the court below, no valid reason, whatsoever, has been projected by the petitioner for recalling P.W.1 for further cross examination and in such view of the matter, the court below is perfect in holding that the petition preferred by the petitioner for recalling P.W.1 is totally bereft of valid and acceptable reasons and only intended to delay the proceedings endlessly and harass the witness.

9. For the reasons aforestated, I do not find any infirmity or error in the impugned order passed by the court below.

10. Resultantly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar

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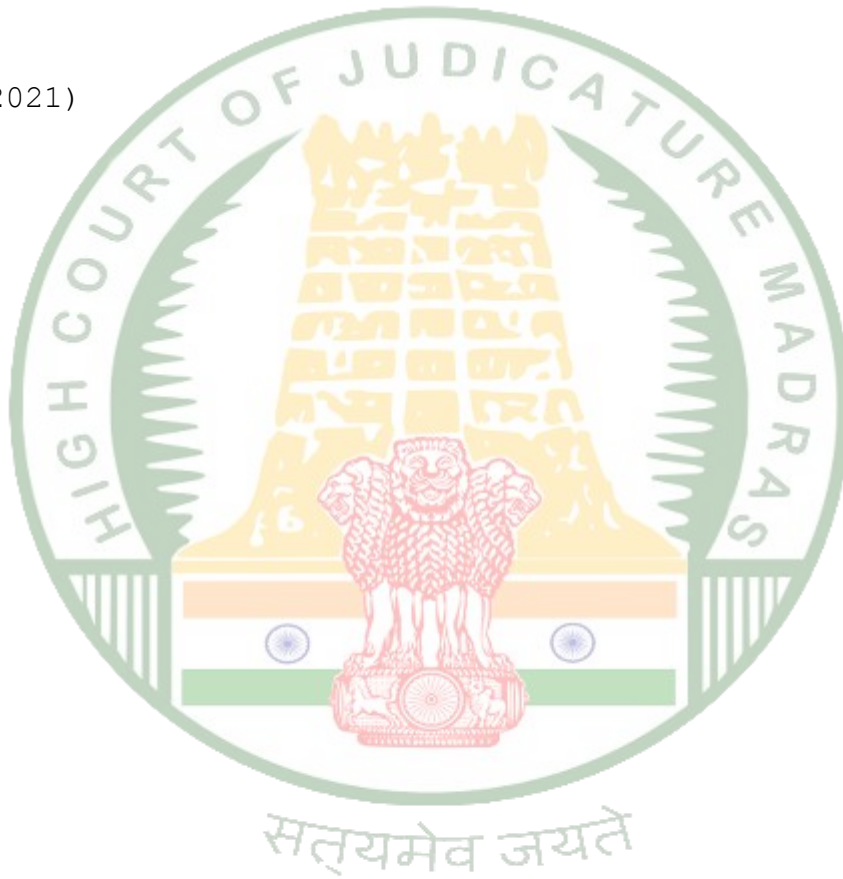
1. Judicial Magistrate Court No.I, Alandur (FAC),
Chennai 600 016

2. The Inspector of Police
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3. The Public Prosecutor, High Court, Madras.

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GP (CO)
KP (20/01/2021)



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