



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.O.P (MD)No.11138 of 2020

Rajendran

... Petitioner

Vs

State Rep. by
The Sub Inspector of Police,
Sholavandan Police Station,
Madurai District.
Crime No.179 of 2018

... Respondent

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records and set aside the order passed by the Judicial Magistrate Court, Vadipatti, Madurai District in Cr.M.P.No.630 of 2020 in CC No.452 of 2017 dated 18.03.2020 dismissing the petition filed by the petitioner under Section 311 of Cr.P.C for recalling of PW 1 for cross examination on the file of the Respondent police within a time frame fixed by this Court.

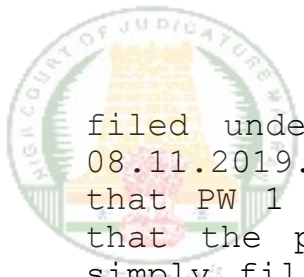
For Petitioner	:	Mr.S.Vikram
For Respondent	:	Ms.S.E.Veronica Vincent Government Advocate.

O R D E R

The petitioner is figuring as accused in CC No.452 of 2017 on the file of the Judicial Magistrate Court, Vadipatti. The petitioner has been charged with the offences under Sections 279, 337 and 304 (A) of IPC. The petitioner filed Cr.M.P.No. 630 of 2020 under section 311 of Cr.P.C seeking recall of PW1. The said petition was dismissed by the impugned order dated 18.03.2020. Questioning the same, this Original Petition has been filed.

2. The learned counsel appearing for the petitioner states that when the witness was cross examined, the cross examination was not done effectively. To render substantial justice, the petitioner must be given one more opportunity.

3.I am not persuaded by the said submission made by the learned counsel for the petitioner. As rightly pointed out by the learned Government Advocate, the petitioner in his recall petition had stated that PW 1 Ganesan was not at all cross examined. She also would point out that this was factually an incorrect statement. She draws my attention to the impugned order, where it has been categorically mentioned that PW 1 was examined in chief on 22.02.2018 and the said witness was recalled based on the petition



filed under Section 311 of Cr.P.C. PW 1 was cross examined on 08.11.2019. Therefore, the averment set out in Cr.M.P No.630 of 2020 that PW 1 was not cross examined is clearly incorrect. It appears that the petitioner's counsel had taken a stereo typed form and simply filled up and filed the recall petition. This Court cannot approve such practice. Obtaining relief under Section 311 is not a matter of right or a matter of course. The learned Government Advocate places reliance on the judgment reported in [(2015) 1 MLJ (CrI) 288 (SC)], wherein, it was held as follows:-

16.The essential function of a Court is delivery of justice. There is no magic wand to deliver it. Contested matters have to be adjudicated on the evidence adduced and conclusions are drawn thereon. Parties shall produce the Court the essential and necessary evidence to assist the court to render justice. Evidence which is relevant shall not be held back. Evidence which is required shall be brought forward. This is also one of the objective behind Section 311 Cr.P.C.

17..Examination of a witness consists of his chief examination, cross-examination and re-examination, if the need arises. This has been envisaged in Section 138 of the Evidence Act. Section 311 Cr.P.C and Section 138 of Evidence Act must be read together.

18.Section 311Cr.P.C is in two parts. It's 1st part is discretionary in nature. However, its second part is mandatory in nature. If the Court finds that it is just and necessary that the evidence have to be produced before the Court then it has to be done. It may be also through the cross-examination of witness, also has been already examined in chief.

4.Applying the said decision, I am of the view that no case for recall has been made out. PW 1 appeared before the Court below and was examined in chief and cross examination was also completed. There is no question of recalling him for the second time. Moreso, no case for the same has been made out in the petition. The reasons given by the Court below are definitely sustainable. Therefore, the Criminal Original Petition is dismissed.

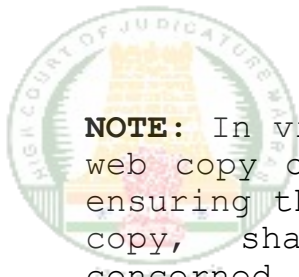
Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)



NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

WEB COPY

To

- 1.The Sub Inspector of Police,
Sholavandan Police Station,
Madurai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P (MD) No.11138 of 2020
12.10.2020

CK(CO)

AP(26/11/2020) 3P 3C