

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 08.02.2021
CORAM
THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.2076 of 2021

M.M.Sundaram

.. Petitioner

Vs.

State rep by
The Inspector of Police,
Central Crime Branch,
XIVth Team, Egmore,
Chennai - 8.

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order passed by the Judicial Magistrate No.I, Poonamallee in Crl.MP.No.1080 of 2020 in CC.No.179 of 2011 dated 26.02.2020 and direct the Judicial Magistrate No.I, Poonamallee to recall the witnesses P.W.1, P.W.2, P.W.3, P.W.6 and P.W.7 for cross examination.

For Petitioner : Mr.L.Murali Krishnan
For Respondent : Mr.C.Raghavan
Government Advocate

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 of Cr.P.C., wherein the petitioner had sought for recalling the witnesses PW1 to PW5 and PW7 to PW10 for cross-examination.

2. The petitioner is facing trial before the Court below for offences under Section 420,465,467,468, 471 read with 34 of IPC. It is seen from records that PW1 was examined-in-chief on 11.01.2010, PW2 was examined-in-chief on 25.08.2010, PW3 was examined in chief on 20.08.2014, PW4 was partly examined-in-chief on 11.05.2016, PW5 was examined-in-chief and cross examined on 05.01.2017, PW6 was examined-in-chief on 19.01.2017, PW8 was examined in chief on 08.11.2017, PW9 was partly examined in chief on 2012.2017 and PW10 was examined-in-chief on 20.01.2020. None of these witnesses were cross-examined by the petitioner. The petitioner filed an application under Section 311 of Cr.P.C. to recall these witnesses for cross-examination.

The same was dismissed by the Court below by an order dated 26.02.2020. Aggrieved by the same, the present petition has been filed before this Court.

3. Heard Mr.L.Murali Krishnan, learned counsel for the petitioner and Mr.Mohammed Riyaz, learned Additional Public Prosecutor appearing on behalf respondent.

4. In the considered view of this Court, this Court does not find any illegality or infirmity in the order passed by the Court below. There was absolutely no justification on the part of the petitioner not to have cross-examined the witnesses at the time when they were examined-in-chief. That apart, the petitioner did not take any immediate steps to file an application for recalling the witnesses and it has been filed with an exorbitant delay. Such attitude on the part of the petitioner, cannot be entertained and the applications filed under Section 311 of Cr.P.C. cannot be allowed as a matter of routine.

5. It is brought to the notice of this Court that PW10 is the Investigating Officer and he was examined-in-chief on 20.01.2020. Considering the charges framed against the petitioner, this Court deems it fit to give one last opportunity to the petitioner to cross examine PW10.

6. In view of the above, the order passed by the Court below is interfered only insofar as PW10 is concerned and the same is accordingly modified. The Court below is directed to fix a date for appearance of PW10 and the petitioner shall pay a cost of Rs.1,000/- (Rupees one thousand only) to PW10 on the date of his appearance. On such payment, the Court below shall permit the petitioner to cross examine PW10 and the cross-examination shall be completed on the very same day.

7. This Criminal Original Petition is disposed of accordingly with a direction to the Court below to complete the proceedings in CC.No.179 of 2011 within a period of three months from the date of receipt of a copy of this order.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Inspector of Police,
Central Crime Branch,
Chennai.

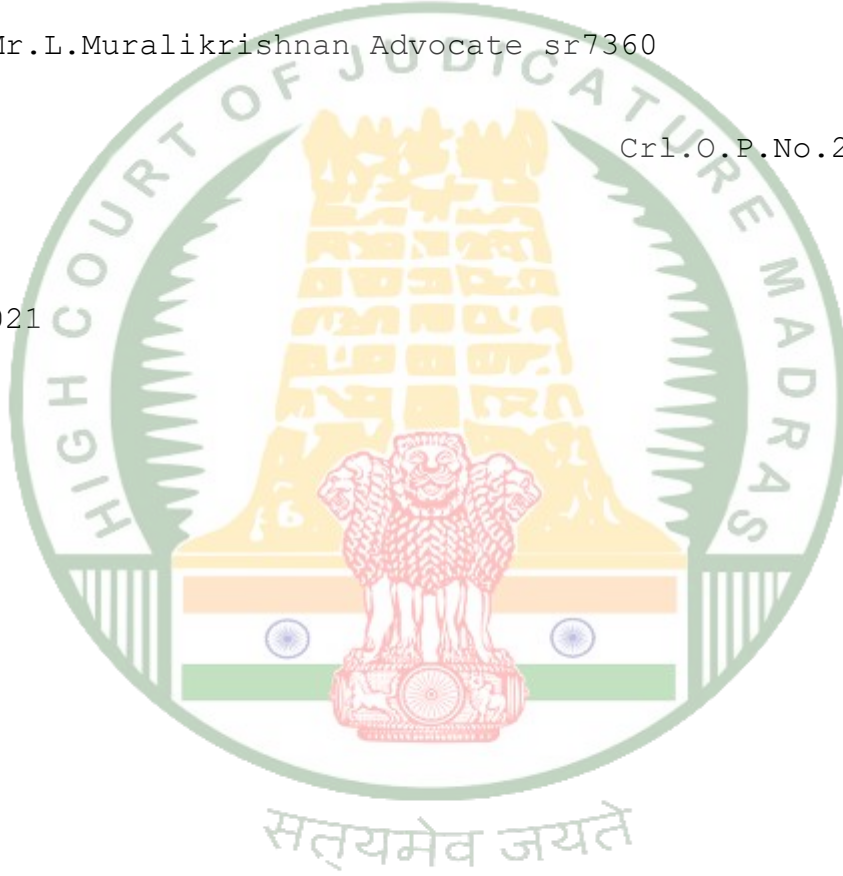
2.The Public Prosecutor
High Court of Madras
Chennai - 600 104.

3.The Judicial Magistrate No.I,
Poonamallee

+1 cc to Mr.L.Muralikrishnan Advocate sr7360

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