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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.8613 of 2018

Nalliappan

... Petitioner/Accused

Vs.

State by

Sub- Inspector of Police(Crime),
K-7 Crimes, ICF Police Station,
Chennai

Crime.No.1452 of 1998

... Respondent/Complainant

PRAYER:

Criminal Original petition has been filed under Section 482 of Cr.P.C, to call for the records and set aside the order passed by the learned V Metropolitan Magistrate, Egmore, Chennai (viz., to recall of PW3 was dismissed) in Crl.M.P.No.311 of 2017 dated 04.07.2017 in CC.No.1549 of 1999.

For Petitioner : M/S.K.R.Ramesh Kumar

For Respondent : Mr.A.Gopinath

Government Advocate (Crl side)

ORDER

This Original Petition has been filed under section 482 of Cr.P.C to call for the records and set aside the order passed by the learned V Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.311 of 2017 dated 04.07.2017 in CC No.1549 of 1999.

2.The case of the prosecution is that the petitioner is accused in CC No.1549 of 1999. During the trial, PW3 was produced before the court and examined in chief on 30.10.2000 and again he appeared on 16.08.2016 and suddenly the chief examination was said to have been completed on that day itself. Since the lower court counsel was engaged before this court and he did not cross examine the witness, thereby the petitioner filed a 311 petition before the trial court in Crl.M.P.No.311/2017 and the said petition was dismissed by the trial court on 04.07.2017. Challenging the same the present petition is filed.



3. The learned counsel appearing for the petitioner submits that initially the chief examination was conducted in respect of PW3 on 30.10.2000 and thereafter, after 6 years he was suddenly produced before the trial court on 16.08.2016 and on that day itself the chief examination was conducted and the same was completed. Since the petitioner was not able to conduct the cross examination, without conducting the cross examination, rendering any decision in respect of crime against the petitioner is not sustainable. As last chance, this court may fix a date for appearance of PW3. The petitioner is ready to bear the cost of appearance of PW3.

4. The learned government Advocate (Crl.Side) submits that the PW3 will be produced on the payment of cost of Rs.5,000/-.

5. Considering the facts and circumstances of this case, the petitioner is arrayed as accused in the CC No.1549 of 1999. He filed a 311 petition for cross examination of PW3. The said petition was dismissed on the ground that the petitioner did not cross examine PW3. Considering the pendency of the case, the petition was dismissed. However in the circumstances, this court feels that one more opportunity be given to the petitioner. I am inclined to set aside the order passed by the trial court and the respondent is directed to produce the PW3 within a period of two weeks from the date of receipt of copy of this order and on production of PW3, the petitioner has to complete the cross examination on same day and pay a cost of Rs.5,000/- to the PW3.

6. With the above observations, the petition is allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

skt

Copy To

1. The Sub-Inspector of Police (Crime),
K-7 Crimes, ICF Police Station,
Chennai.

2. The V Metropolitan Magistrate,
Egmore, Chennai.



3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.R.Ramesh Kumar, Advocate, S.R.No.47411

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VG-II (CO)
CB(12/11/2021)