



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRIMINAL REVISION CASE NO.522 OF 2021

Ganeshkumar

... Petitioner

Versus

State by
Inspector of Police,
Poonamallee Traffic Investigation Wing,
Crime No. 683/2014.

... Respondent

Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order dated 01.10.2019 passed by the learned III Additional District Judge, Thiruvallur at Poonamallee in CrI.M.P.No.68 of 2019 in CrI.A.No.188 of 2018.

For Petitioner : Mr.M.Marimuthu

For Respondent : Mr.S.Sugendran
Government Advocate (CrI.Side)

O R D E R

This Criminal Revision Case has been filed against the order dated 01.10.2019 passed in Cr.M.P.No.68 of 2019 in CrI.A.No.188 of 2018 by the learned III Additional District Judge, Thiruvallur at Poonamallee.

2.The petitioner herein is the appellant in the above Criminal Appeal. The respondent police registered a case in Crime No.683 of 2014 against the petitioner for the offence under Sections 279, 304(A) IPC r/w 181 of Motor Vehicles Act and after investigation, charge sheet was filed before the learned Judicial Magistrate, Ambattur. On completion of trial, the petitioner was found guilty for the offence under Sections 279 and 304(A) (2 counts) IPC and convicted and sentenced for the above said offences. Challenging the said judgment, the petitioner preferred an appeal in CrI.A.No.188 of 2018 before the learned Principal District and Sessions Judge, Thiruvallur and it was made over to the learned III Additional District Judge, Thiruvallur at Poonamallee. During the pendency of the



appeal, petitioner filed a petition under Section 391 Cr.P.C in Cr.M.P.No.68 of 2019 to summon the witnesses P.W.2, P.W.3 and P.W.9 for cross examination, which was dismissed by the lower Appellate Court on 01.10.2019. Aggrieved by the said order, the petitioner is before this Court.

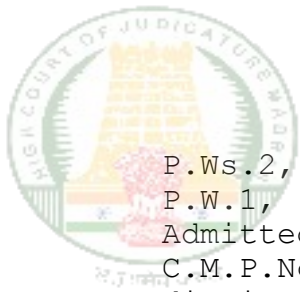
3.The learned counsel for the petitioner would submit that during trial, the petitioner's counsel was unable to cross examine the witnesses P.Ws.2, 3 and 9, since the petitioner is a coolie and he had not given instructions to his counsel to cross examine the said witnesses, due to his illness. Therefore in order to give opportunity to the petitioner this revision may be allowed by issuing summons to the witnesses P.Ws.2, 3 and 9 for cross examination.

4.The learned Government Advocate (Crl.Side) appearing for the respondent would submit that already sufficient opportunity was given to the petitioner by the trial Court to cross examine the witnesses, but, the petitioner had willfully avoided the cross examination of the said witnesses. He would further submit that during the pendency of the trial, petitioner filed a petition to recall the witnesses P.W.1 to P.W.5 and the same was allowed and thereafter, the petitioner had cross examined P.W.1, who is the eye witness to the accident. However, he did not cross examine the witnesses P.Ws.2, 3 and 9 and he has not given sufficient reasons for non-examination of the witnesses and thereby, the trial Court closed the evidences on prosecution side and convicted and sentenced the petitioner. During the pendency of the said trial, the petitioner has not challenged the said order. The petitioner filed petition under Section 391 Cr.P.C., only when the appeal came up for arguments. Therefore, the petitioner has not approached the Court with clean hands, only in order to protract the appeal he filed the petition and hence, the Appellate Court has rightly dismissed the petition.

5.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and also perused the materials available on record.

6.Admittedly, after investigation the petitioner was charged for the offence under Sections 279 and 304(A) (2 counts) IPC and convicted and sentenced for the said offences. During pendency of the appeal, the petitioner filed the petition under Section 391 Cr.P.C to summon the witnesses P.W.2, P.W.3 and P.W.9, which was dismissed by the lower Appellate Court on 01.10.2019.

7.On a careful reading of the entire materials, it reveals that totally nine witnesses were examined, out of which, except,



P.Ws.2, 3 and 9 all other witnesses were cross examined. Further P.W.1, eye witness to the said accident was cross examined. Admittedly, on 03.04.2018, the petitioner filed the petition in C.M.P.No.1716 of 2018 to recall the witnesses and the same was dismissed by the trial Court by holding that the witnesses cannot be harassed. However, the petitioner has not challenged the said order and only filed the appeal, challenging the judgment of conviction after the trial. During pendency of the appeal, the petitioner filed the petition under Section 391 Cr.P.C, without giving sufficient reasons as to why he has not cross examined P.Ws.2, 3 and 9 at the time of trial, which itself shows that only to protract the appeal, the petitioner filed the said petition.

8.In the light of the above facts and circumstances, this Court finds that P.W.1 eye witness was cross examined and the trial Court after considering the entire materials dismissed the petition. Therefore, this Court does not find any merit in this Criminal Revision case. Accordingly, this Criminal Revision Case is dismissed.

9.However, the Appellate Court is directed to dispose of the appeal within a period of three months from today and file a compliance report before this Court.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ms/pbl

To

- 1.The III Additional District Judge,
Thiruvallur at Poonamallee.
- 2.The Inspector of Police,
Poonamallee Traffic Investigation Wing.
- 3.The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.522 of 2021

JP(CO)
PM/14/09/2021