

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.8147 of 2021 and
Crl.M.P.No.5381 of 2021

Sakthisrinivasan

...Petitioner

Versus

STATE REP BY
Inspector of Police,
Sankari P.S.,
Salem District.
(Cr.No.393/2017).

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the condition imposed by an order dated 09.10.2019 passed in CMP.No.3047 of 2019 in CC.No.130 of 2017 on the file of the Judicial Magistrate No.I, Sankari.

For Petitioner : Mr.R.Ezhilarasan

For Respondent : Mr.M.Mohammed Riyaz,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order, dated 09.10.2019 in C.M.P.No.3047 of 2019 in C.C.No.130 of 2017 passed by the learned Judicial Magistrate No.1, Sankari.

2.The petitioner is facing in C.C.No.130 of 2017 before the learned Judicial Magistrate No.I, Sankari for offence under Sections 279 and 304(A) IPC.

3.The learned counsel for the petitioner submitted that the petitioner has filed a petition under Section 311 Cr.P.C., to recall PW.1 for cross examination, which was allowed on 09.10.2019 by the trial Court on condition that the petitioner to deposit witness batta for a sum of Rs.1,000/- within five

days, failing which, the order stands dismissed without any further reference. Since the petitioner was not informed by his counsel, the amount of Rs.1,000/- could not be deposited and the order of the trial Court cancelled automatically. The petitioner for the delay had filed a petition on 22.03.2021 before the trial Court seeking time for payment of deposit of Rs.1,000/-, but the petition was not entertained and was returned on that day. The learned counsel further submitted that that totally on the side of the prosecution, 13 witnesses were examined in this case. The petitioner only wants to recall PW.1 for cross examination, who is a vital witness. Only after cross examination of the witnesses, the evidence would be completed and the petitioner can putforth his case. Hence, he prayed for setting aside the order.

4.The learned Additional Public Prosecutor appearing for the respondent submitted that PW.1 examined in this case on 16.10.2017. In the year 2019, a petition under Section 311 Cr.P.C., was filed. The trial Court on 09.10.2019, permitted the petitioner to recall PW.1 for cross examination with condition. The petitioner did not comply with the condition and the order of the trial Court cancelled automatically. Two years thereafter, on 22.03.2021, the petitioner has filed a petition seeking extension of time, which the trial Court did not entertain and returned the petition.

5.On considering the rival submissions and on perusal of the materials, it is seen that the petitioner is facing trial for offence under Sections 279 and 304(A) IPC. PW.1 is the important witness, who stated about the accident. Hence, the petitioner has to necessarily cross examine PW.1 to putforth his defence, otherwise, the evidence of PW.1 in chief would go unchallenged.

6.Taking into consideration in this case 13 witnesses were examined by the prosecution and the petitioner is seeking to recall PW.1 only, this Court is inclined to permit the petitioner to recall PW.1 for cross examination.

7.The petitioner is directed to pay Rs.5,000/- as batta charges to PW.1 on or before 01.06.2021. After payment, the trial Court is directed to recall PW.1 within a week and the cross examination to be completed on the day when the witness is present.

8.In view of the above, the order, dated 09.10.2019 in C.M.P.No.3047 of 2019 in C.C.No.130 of 2017 passed by the learned Judicial Magistrate No.1, Sankari is set aside.

Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

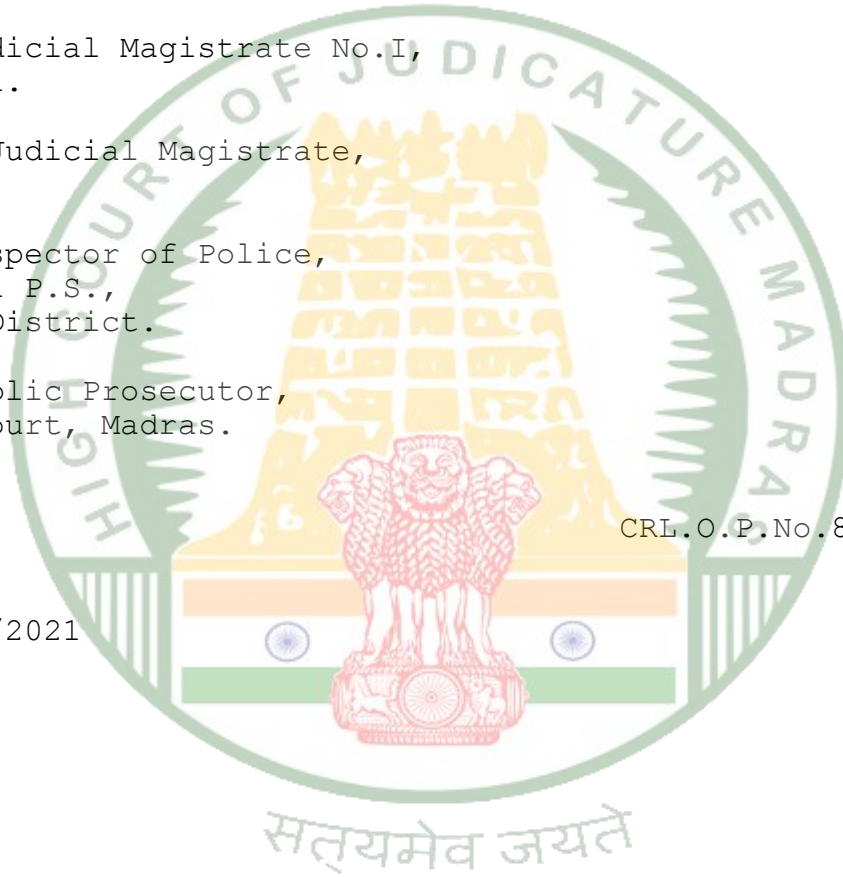
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To

1. The Judicial Magistrate No.I,
Sankari.
2. Chief Judicial Magistrate,
Salem.
3. The Inspector of Police,
Sankari P.S.,
Salem District.
4. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.8147 of 2021

UM(CO)
KKV/01/06/2021



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