

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.04.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.OP.No.8037 of 2021 &
Crl.MP.No.5278 of 2021

M.Karthikeyan

... Petitioner

Versus

State by,
The Inspector of Police,
CCB, Team XV, Egmore,
Chennai.
Crime No.393 of 2007

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the Judicial Magistrate Court No.I at Alandur in Crl.MP.No.252 of 2021 dated 08.04.2021 and to permit the petitioner to recall witnesses PW1 and PW4 in above CC.No.1111 of 2007 pending before the Judicial Magistrate Court No.I at Alandur.

For Petitioner : Mr.K.J.Saravanan

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

ORDER

The petitioner/accused in CC.No.1111 of 2007 had filed a petition under Section 311 of Cr.P.C. before the Judicial Magistrate Court No.I at Alandur in Crl.MP.No.252 of 2021 for recalling PW1 and PW4. The trial court dismissed the same on 08.04.2021, against which, the present petition is filed.

2. The contention of the learned counsel for the petitioner is that PW1 was examined on 24.05.2008 and thereafter, at request of the prosecution, he was again examined in chief on 18.08.2010. PW2 turned hostile and was examined on 09.03.2016, PW3 on 19.08.2019 and PW4 on 17.02.2020. Thereafter, the petitioner filed a petition under Section 311 Cr.P.C. to recall PW1 and PW4 on the ground that the documents pertaining to the defence of the above case was taken by the police at the time of his arrest, hence he waited till the examination of police to corroborate the witness of PW7 with PW1 and subsequently, PW7

Police Officer did not mark the seized documents and hence PW1 could not be cross examined immediately. PW4 was examined only on 17.02.2020. The petitioner was not able to cross examine PW4 at that time since the lower courts were closed due to Covid-19 Pandemic situation. Further, even now, the Courts are functioning with certain restrictions. Hence he prayed for allowing this petition.

3. The learned Additional Public Prosecutor submitted that the case is of the year 2007. PW1 was examined on 24.05.2008 and then on 18.08.2010. The petitioner did not choose to cross examine PW1 at that time. PW4 in this case was examined on 17.02.2020 and PW4 was also not cross examined by the petitioner. Thereafter, on 08.02.2021, a petition under Section 311 Cr.P.C. was filed by the petitioner with only an intention to drag on the proceedings and protract the trial, causing harassment to the witnesses and the defacto complainant. The lower court had rightly considered these factors and dismissed the petition. Hence, opposed the petition.

4. Considering the submissions and on perusal of materials, it is seen that PW1 was examined on 24.05.2008 and subsequently, two years later on 18.08.2010 chief examination was conducted. There is no reason given by the prosecution for examining PW1 two years later. Further, the contention of the learned counsel for the petitioner is that the documents pertaining to the defence of the above case was taken by the police at the time of his arrest, hence he waited till the examination Sub Inspector of police to corroborate the witness of PW7 with PW1 and subsequently, PW7 Police Officer did not mark the seized documents and hence PW1 could not be cross examined immediately. With regard to PW4, on 17.02.2020, chief examination was conducted. Thereafter, the case was adjourned. In the meanwhile, due to the Covid-19 Pandemic situation from March 2020, the lower court was closed. Now again, the Courts are functioning, with restricted entry. In view of the above, this court allows this petition to recall PW1 and PW4. When the witnesses appear, the petitioner shall not seek for any adjournment and cross examine them without any further delay. The order passed by the Judicial Magistrate Court No.I at Alandur in CrI.MP.No.252 of 2021 dated 08.04.2021 is hereby set aside. Accordingly, this petition is allowed. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mbi
To

1.The Inspector of Police,
CCB, Team XV, Egmore,
Chennai.

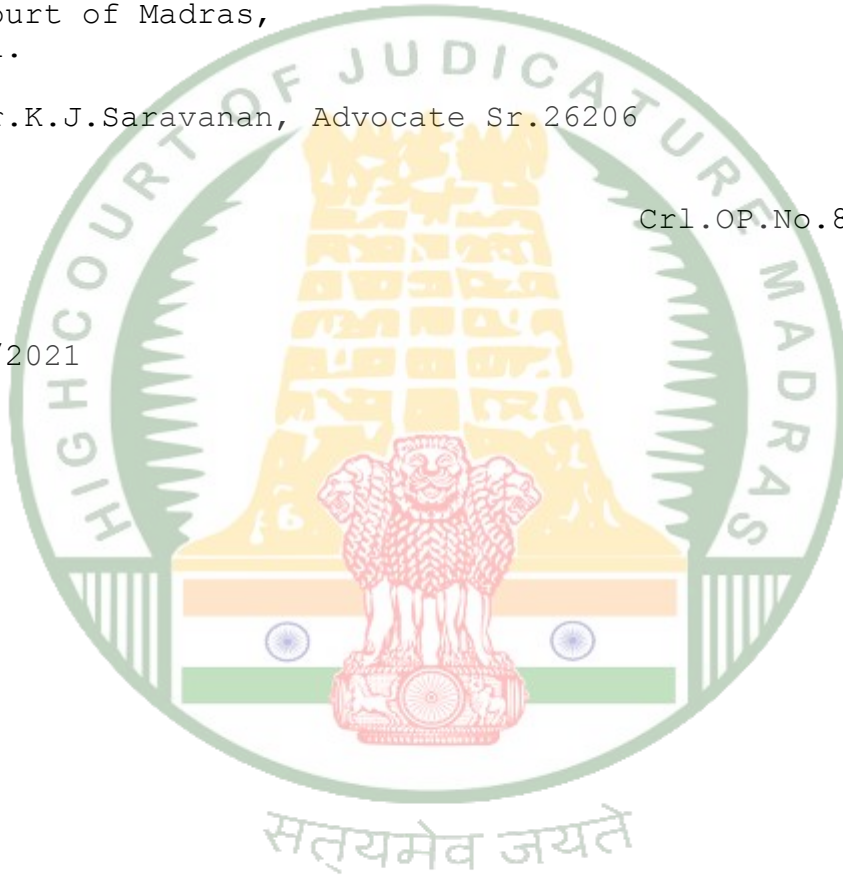
2.The Judicial Magistrate Curt No.1,
Alandur.

3.The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.K.J.Saravanan, Advocate Sr.26206

Cr1.OP.No.8037 of 2021

jpl[col]
srg 10/06/2021



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