

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.15158 of 2021

Eswaran

... Petitioner

Vs.

State Rep. by
The Sub Inspector of Police,
North Police Station,
Tiruppur,
Tiruppur District.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order made in Crl.M.P.No.286 of 2021 dated 08.04.2021 on the file of the learned Judicial Magistrate Court No.1, Tiruppur.

For Petitioner : Mr.S.N.Arunkumar

For Respondent : Mr.A.Damodaran
Government Advocate (Crl. Side)

O R D E R

This Criminal Original Petition is filed to set aside the order made in Crl.M.P.No.286 of 2021 dated 08.04.2021 on the file of the learned Judicial Magistrate Court No.1, Tiruppur.

2.The contention of the petitioner is that the petitioner is an accused facing trial for the offence under Sections 279 and 338 IPC. The petitioner had appeared on summons before the trial Court on 14.10.2020 and copies served on the same day. Initially questioning was completed on 28.10.2020 and thereafter the case was reposted to 30.11.2020 and to 18.12.2020, due to COVID-19 lock down. On 20.01.2021, PW1 and PW2 were examined by the prosecution.

3.PW1 is the defacto complainant, the injured eye witness and PW2 is the other eye witness have been examined. The petitioner after receipt of the copies on 14.10.2020 not yet appointed an Advocate of his choice. The trial Court neither ascertaining whether the petitioner is defending the case by an Advocate of his choice nor nominated any Advocate under Section 304 Cr.P.C. On the other hand, PW1 and PW2 were

examined by the prosecution and cross examination could not be conducted. Thereafter, the Courts were closed due to COVID-19 pandemic situation. In the mean time, the petitioner had filed a petition on 10.02.2021 under Section 311 Cr.P.C. in Crl.M.P.No.286 of 2021 to recall PW1 and PW2 and also permit him to cross examine them. The trial Court had dismissed the same and the reasons given by the trial court are not proper.

4.The learned Government Advocate [Crl. Side] submitted that in this case the petitioner was a rider of the two wheeler bearing Registration No.TN39 BM 2806 and he had proceeded in a rash and negligent manner and hit the defacto complainant i.e. PW1 caused grievous injury, which has been witnessed by the other eye witness i.e. PW2 and a case came to be registered. Investigation completed, listing LW1 to LW9.

5.In this case, so far two witnesses i.e. PW1, who is the injured eye witness and PW2 is the other eye witness have been examined. The petitioner failed to cross examine the witnesses and caused harassment and delay. Now the petitioner had filed the petition under Section 311 Cr.P.C. belatedly.

6.Considering the submissions and on perusal of the materials, it is seen that the petitioner is involved in a motor vehicle accident and caused grievous injury to PW1, who is the defacto complainant and witness in this case. PW2 is the other eye witness to the occurrence and hence, cross examination of the above said persons are necessary. The petitioner had not engaged an Advocate of his choice and he had also stated that the courts were closed since the COVID-19 situation got aggravated. The trial court had dismissed the above said Crl.M.P.No.286 of 2021 by quoting reasons is not a ground for denying the right of the cross examination, which is an indispensable right. The defence of the accused can be put forth and probabalize his defence by cross examination. The evidence of a witness is completed only after testing the evidence by way of cross examination. By cross examination only the trial court is benefited by assessing the veracity and truthfulness of the witnesses. Further finding this case is at the initial stage and the reasons given by the petitioner are acceptable. The petitioner cannot be denied his valuable right of cross examination.

7.In view of the same the order dated 08.04.2021 in Crl.M.P.No.286 of 2021 passed by the learned Judicial Magistrate No.I, Tiruppur is set aside. The learned Judicial Magistrate No.I, Tiruppur is directed to recall PW1 and PW2 for the purpose of cross examination on the condition that when the witnesses appear the petitioner to cross examine PW1 and PW2 on the same day without seeking any further adjournment.

8. Accordingly, this Criminal Original Petition stands allowed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.1,
Tiruppur.

2. The Sub Inspector of Police,
North Police Station,
Tiruppur,
Tiruppur District.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Ramkumar, Advocate SR.No.44224

Cr1.O.P.No.15158 of 2021

BR(CO)
GMY(06/09/2021)