

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2021

CORAM

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.19347 of 2020

and CMP.No.7773 of 2020

Kasi,

S/o.Thoppula Gounder.

... Petitioner/Accused

Vs.

The State rep. by

Inspector of Police,

CBCID Police Station,

Tiruvannamalai.

... Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and set aside the docket order dated 07.10.2020, passed by Principal District and Sessions Judge, Tiruvannamalai in S.C.No.116 of 2010.

For Petitioner : Mr.B.Jawahar

For Respondent : Mr.C.Raghavan

Government Advocate (Crl.side)

O R D E R

This petition has been filed challenging the order passed by the Court below dated 07.10.2020, wherein the Court below after allowing the application filed by the petitioner to recall P.W.46 and P.W.53, has subsequently relied upon a circular issued by this Court and held that these witnesses need not be cross examined since they are expert witnesses.

2.The petitioner is facing trial before the Court below for serious charges. The prosecution had examined P.W.46 and P.W.53, who were scientific experts and their reports were marked. These witnesses were not cross examined on the same day since the counsel representing the petitioner was indisposed. The petitioner filed an application to recall P.W.46 and P.W.53 for cross examination. This application was allowed by the Court below by an order dated 25.02.2020 and directed the petitioner to pay the Batta. The petitioner also paid the Batta and process was issued to these witnesses. In the meantime, due to pandemic situation, there was no progress in the case and the Court suo motu passed an order on 07.10.2020 by relying upon a circular issued by this Court and had come to a conclusion that P.W.46 and P.W.53 need not be cross examined. Aggrieved by the same, the present petition has been filed before this Court.

3.Heard Mr.B.Jawahar, learned counsel appearing on behalf of the petitioner and Mr.C.Raghavan, learned Government Advocate (Crl.side), appearing on behalf of the respondents.

4.In the considered view of this Court, the Court below having allowed the application filed by the petitioner to recall and cross examine P.W.46 and P.W.53 and the petitioner also having paid the witness Batta, ought not to have suo motu decided not to permit the petitioner to cross examine P.W.46 and P.W.53. Even while passing the orders on 25.02.2020, the Court below had taken into consideration the Division Bench Judgment of this Court and also the scope of Section 393 Cr.P.C and thereafter proceeded to allow the application. The procedure adopted by the Court below to suo motu recall its earlier order and not permit the petitioner to cross examine the witnesses, cannot be sustained in the eye of law. The prosecution having examined these witnesses, can be subjected to cross examination, more particularly, when the accused person had been given an indefeasible right to fair trial.

5.In view of the above discussion, this Court has no hesitation to interfere with the docket order passed by the Court below on 17.10.2020 and the same is hereby set aside. There shall be a direction to the Court below to fix a date for the appearance of P.W.46 and P.W.53 and on the date of their appearance, they shall be cross examined and it shall be completed on the same date.

6.This Criminal Original Petition is accordingly allowed with the above directions. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Principal District & Sessions Judge
Thiruvannamalai

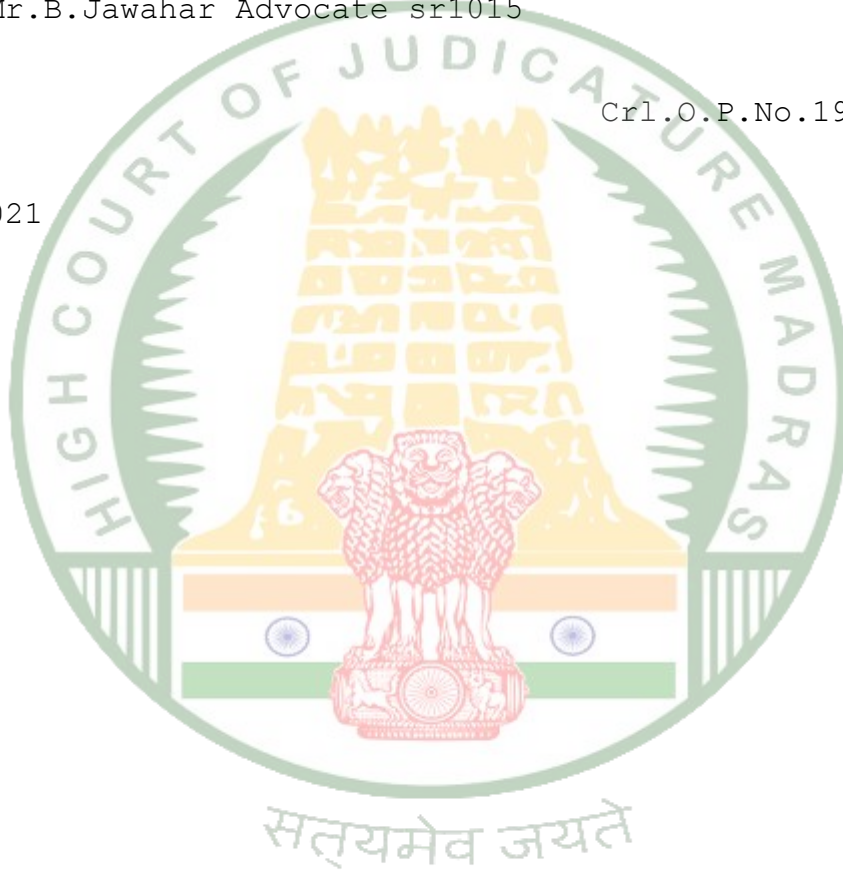
2.The Inspector of Police,
CBCID Police Station,
Tiruvannamalai.

3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.B.Jawahar Advocate sr1015

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