



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.20324 OF 2021

AND

CRL.M.P.NO.11064 OF 2021

Syed Insafur Rahman

... Petitioner

Versus

State by: Inspector of Police,
Central Crime Branch,
EDF III, Team, XXIA,
Vepery, Chennai - 600 007.

... Respondent

PRAYER:

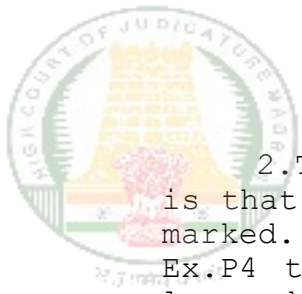
Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to set aside the order of dismissal dated 07.10.2021 in CrI.MP.No.4170 of 2021 in C.C.No.125 of 2018 on the file of Judicial Magistrate I, Poonamallee, in respect of recall of witness PW1 Mr.Mohamed Rizwan and permit this petitioner/1st accused for further cross examination of PW1 Mr.Mohammed Rizwan in C.C.No.125 of 2018.

For Petitioner : Mr.C.Sankar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioner, who is the first accused in C.C.No.125 of 2018 facing trial for offences under Section 420, 506(i) & 120-B IPC before the learned Judicial Magistrate No.I, Poonamallee, has filed a 311 Cr.P.C petition in CrI.M.P.No.4170 of 2021 to recall PW1, PW3 to PW7 for cross examination. The trial Court partly allowed the 311CrI.P.C petition permitting the petitioner to recall PW3 to PW7 with a condition that to pay Rs.1000/- as batta to all the recall witnesses PW3 to PW7. As regards PW1, the same has been dismissed, against which, the present petition.



2.The contention of the learned counsel for the petitioner is that PW1 was examined on 17.10.2019 and Ex.P1 to P3 have been marked. Thereafter, subsequent witnesses were examined and Ex.P4 to P9 have been marked. Further, the contention of the learned counsel for the petitioner is that these documents pertain to PW1, which would go into the root of the case and demolish the case against the petitioner. These documents have to be necessarily put to PW1, the lower Court failed to consider these aspects and though permitted for recalling other witnesses, as regards the PW1 vital witness, the same has been dismissed. The great prejudice would be caused and he is ready to cross examine the witness, then and there, without taking any further adjournment as and when the witness appears.

3.The learned Additional Public Prosecutor submits that in this case, totally PW1 to PW10 have been examined. The examination of I.O is completed. At the stage of defense, this petition has been filed to drag on the proceedings. He fairly submits that the lower Court permitted to recall PW3 to PW7, as regards PW1, for the reason that not to harass PW1, the petition has been dismissed.

4.Considering the rival submission and on perusal of the materials, there is no dispute, with regard to Ex.P4 to P9. According to the petitioner, these documents have to be necessarily put to PW1. In view of the same, this Court is inclined to recall PW1 on the same condition as imposed by the lower Court for recalling of PW3 to PW7 i.e. to pay batta of Rs.1000/- to PW1 and the cross examination of the said witness shall be done on the same day when he appears without seeking any adjournment.

With the above directions, the criminal original petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Inspector of Police,
Central Crime Branch,
EDF III, Team, XXIA,
Vepery, Chennai - 600 007.



2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Sankar, Advocate, S.R.No.58559

CRL.O.P.No.20324 of 2021
and
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PL (CO)
PM/07/12/2021