



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHADIRA

Crl.O.P.No.3442 of 2022

and

Crl.M.P.No.1913 of 2022

Ashwin Chand Mahesh

... Petitioner/Accused

Vs.

The State rep. by the Inspector of Police,
Kelambakkam Police Station,
Chennai.

... Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Cr.P.C, to set aside the order dated 10.12.2021 passed in Crl.M.P.No.7526 of 2021 in C.C.No.740 of 2013 on the file of Judicial Magistrate, No.1, Chengalpattu.

For Petitioner : Mr.G.K.R.Pandian

For Respondent : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed seeking to set aside the order dated 10.12.2021 passed in Crl.M.P.No.7526 of 2021 in C.C.No.740 of 2013 on the file of Judicial Magistrate, No.1, Chengalpattu and permit the petitioner to recall and cross examine PW5 /Motor Vehicle Inspector.

2. Learned counsel for the petitioner would submit that the petitioner is an accused facing trial for the offence under Sections 279, 337, 304(A) of IPC. The respondent has examined PW5/Motor Vehicle Inspector and marked his report in respect of the vehicle as Ex.P2. The petitioner was unable to cross examine the Motor Vehicle Inspector on 15.02.2021. The petitioner was under the impression that he could recall and cross examine the Motor Vehicle Inspector after the examination of Investigation Officer. The evidence on the side of prosecution was closed on 18.02.2022 and thereafter, due to Covid-19 lock down, the



petitioner did not get any opportunity to recall and cross examine PW5. Thereafter, petitioner had filed an application in CrI.M.P.7526 of 2021 seeking to recall PW5 on 07.09.2021, whereas, the trial Court wrongly holding that the scope of cross examination of PW5 was limited had dismissed the application.

3. He would further submit that a perusal of Ex.P2, shows some contradictions in the report filed by PW5. In column Brake Efficiency of the Report, the Motor Vehicle Inspector stated as follows:

"could not be road tested due to following damages, on stationery inspection revalued that the front and rear brakes are intact and in order"

In the next column regarding Damages, he had stated as follows:

"Roof top, Tail door, wind screen glass (Front) both right side doors, both left side doors, both rear view mirrors, Bonnet, both fender's, Front bumper, Right Side, sill panel, right side rear wheel disc, left side front wheel disc, Rear bumper and both rear outer panel damaged".

In brake efficiency, the Motor Vehicle Inspector has stated that front and rear brakes are intact and in order, whereas in Damages, he has stated that right side rear wheel disc, left side front wheel disc are damaged. Therefore, it is very essential that the Petitioner has to recall and cross examine PW5/Motor Vehicle Inspector.

4. Learned counsel for the petitioner would submit that if chance is not given to the petitioner to recall PW5, they will be put to great hardship and prejudice. He would further undertakes that as PW5 is an official witness, he is prepared to cross examine PW5 on the same day of his appearance, before the trial Court, any day after 03.03.2022.

5. Mr. A. Gokulakrishnan, learned Additional Public Prosecutor would submit that the trial Court found that all the other witnesses have been cross examined and the scope of examining PW5 was limited and had dismissed the application. However, he would submit that if the Court issues direction to recall the PW5, the respondent will produce PW5 for cross examination.

6. Heard both sides and perused the materials available on record.

7. This Court taking into consideration the submissions made by the learned counsel for the petitioner, is of the opinion that PW5 has to be necessarily cross examined with regard to the contents of Ex.P2. In view of the above, the



order dated 10.12.2021 in CrI.M.P.No.7526 of 2021 in C.C.No.740 of 2013 stands set aside. The learned counsel for the petitioner is directed to file a fresh application on 03.03.2022 before the trial Court and on such application being filed on the next hearing date, the trial Court shall direct PW5/Motor Vehicle Inspector to present before the trial Court on any subsequent date. The petitioner shall deposit costs of Rs.1000/- before the trial Court. On the date of appearance of PW5, the Trial Court shall disburse the amount to PW5. It is made clear that the petitioner shall cross examine PW5 on the date of his appearance. In the event of failure of cross examination on the said date, the petitioner shall lose his opportunity to cross examine PW5.

8. With this above observations and directions, this Criminal Original Petition stands disposed of. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

shk/sai

To

1. The Inspector of Police,
Kelambakkam Police Station, Chennai.
2. The Public Prosecutor,
High Court, Madras.

Copy to:
The Judicial Magistrate No.1,
Chengalpattu.

+1cc to Mr.G.K.R.Pandian, Advocate, S.R.No.10942

CrI.O.P.No.3442 of 2022

MG (CO)
SU (22/02/2022)