

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2009

CORAM:

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

CRL.O.P.No.10719 of 2009

and

M.P.Nos.1 and 2 of 2009

1.Murali
2.Visalam
3.P.Bhanumathi

...Petitioners/Accused 1 to 3

Vs.

State Represented by its
Inspector of Police
W1 Police Station
Thousandlights
Chennai
(Cr.No.4 of 2007)

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 25.11.2008 passed in Crl.M.P.No.1928 of 2008 in C.C.No.5640 of 2007 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai-08 and consequently direct the learned Chief Metropolitan Magistrate to recall P.W.1 for re-examination of the above case.

For Petitioner : Mr.R.Karthikeyan
For Respondents : Mr.I.Paul Nobel Devakumar
Govt. Advocate (Crl.Side)

ORDER

Questioning the legality of the order passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.1928 of 2008 in C.C.No.5640 of 2007 dated 25.11.2008, the present petition has been filed under Section 482 Cr.P.C with a prayer that the said order should be set aside and the learned Chief Metropolitan Magistrate, Egmore, Chennai should be directed to recall P.W.1 for further cross-examination with reference to a number of documents which the petitioners (accused) want to rely on.

2. The submissions made by Mr.R.Karthikeyan, learned counsel for the petitioner and by Mr.I.Paul Nobel Devakumar, learned Government

Advocate (Crl. Side) representing the respondent were heard. The materials available on record were also perused.

3. A case was registered on the file of W.1 All Women Police Station, Thousand Lights, Chennai as Cr.No.4/2007 of the said police station against the petitioners herein based on the complaint made by the wife of the first petitioner herein. After investigation, a final report was submitted and a criminal case was instituted on police report against the petitioners herein in C.C.No.5640/2007 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai for alleged offences punishable under Sections 406 and 498-A IPC and offences punishable under Sections 4 and 6 of Dowry Prohibition Act. The said case is in the part heard stage.

4. Already four witnesses have been examined on the side of the prosecution as P.Ws.1 to 4. Thereafter, the petitioners moved a petition under Section 311 of Cr.P.C before the trial court for recalling P.Ws.1 to 4 stating that they were to be cross-examined with reference to some of the documents which were vital for their defence in the said case. However, the petitioners did not produce the documents along with the petitions. Not even a list of documents was filed along with the petition. The learned Chief Metropolitan Magistrate, after hearing, dismissed the said petition by order dated 25.11.2008 observing that Section 311 Cr.P.C was not intended to fill up any lacuna.

5. The learned counsel for the petitioners contends that the learned Chief Metropolitan Magistrate did not properly consider the scope of the power of the court under Section 311 Cr.P.C and that the court below has erroneously dismissed the petition with an observation that such petition could not be filed for filling up lacuna. It is the further contention of the learned counsel for the petitioners that the petitioners facing criminal charges, should be given reasonable opportunity to put-forth their defence and that cross-examining the prosecution witnesses with reference to the documents which came into the hands of the accused subsequent to the examination of the prosecution witnesses would help the accused persons very much in establishing their innocence; that the prosecution witnesses could not be cross-examined with reference to such documents as they were not readily available with the petitioners at the time of examination of P.Ws.1 to 4 before the trial court and that when they were able to get those documents, they approached the trial court under Section 311 in vain to get an order recalling P.Ws.1 to 4 so that they could be cross-examined with reference to the documents sought to be relied on by the petitioners to prove their innocence.

6. The learned counsel for the petitioners also pointed out the fact that the petitioners are not seeking an order recalling their witnesses so that it may be assumed that the petitioners are trying

to fill up the lacunae caused in the evidence adduced before the trial court. It is also the contention of the learned counsel for the petitioner that there is no contention on behalf of the respondent that the witnesses sought to be recalled for further cross-examination have turned hostile and are supposed to support the defence case of the petitioners so that it can be said that the present attempt to recall them shall be nothing but an attempt to fill up the lacunae in the defence case.

7. After considering the submissions made by the learned Government Advocate (Crl. Side) in this regard in reply to the above said contentions raised by the learned counsel for the petitioner and after perusing the records, this court is of the considered view that the opinion expressed by the court below that the present move by the petitioners is an attempt to fill up the lacunae has been made without any basis. The courts should be liberal in granting such prayers, when the accused facing grave charges come forward with a plea that some of the documents which came to their possession later on are very vital for the defence and that the same will clinchingly prove their innocence or disprove the case of the prosecution. Denying such an opportunity will result in denial of reasonable opportunity to the accused persons to disprove the case of the prosecution or prove their innocence. The same may result in miscarriage of justice. The respondent has not raised any objection on the ground that the present move by the petitioners is with a view to drag on the proceedings as long as possible.

8. Yet another fact to be taken into account is the submissions made by the learned counsel for the petitioners during the course of the arguments advanced in this criminal OP to the effect that though the petitioners had prayed for an order recalling P.Ws.1 to 4, the petitioners are not very particular in recalling P.Ws.2 to 4 and that it will be sufficient to recall P.W.1 alone. The petitioners have also submitted a memo listing out the documents relating to which P.W.1 has to be cross-examined after recalling him. This court, after going through the list, is also of the opinion that cross-examining P.W.1 relating to those documents will go a long way in establishing the defence case of the petitioners. This court is of the further view that denying such an opportunity, shall, even result in prejudice and injustice to the petitioners.

9. For all the reasons stated above, this court comes to the conclusion that in order to do complete justice and prevent miscarriage of justice, the petitioners should be granted the relief sought for in this petition. The petitioners shall submit a copy of memo produced in this petition before cross-examining P.W.1 to the Public Prosecutor concerned in the trial court.

10. In the result this petition is allowed and P.W.1 is recalled for re-examination in Crl.M.P.No.1928 of 2008 in C.C.No.5640 of 2007

on the file of the Chief Metropolitan Magistrate, Egmore, Chennai.
Consequently, connected miscellaneous petitions are also closed.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

asr/

To

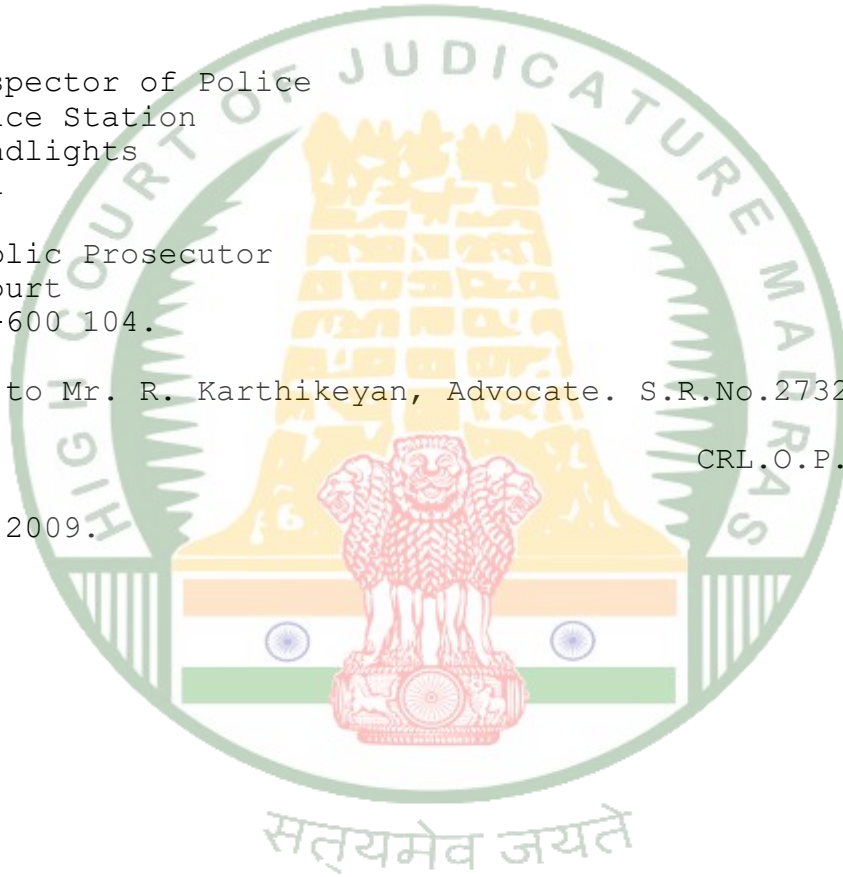
1. The Inspector of Police
W1 Police Station
Thousandlights
Chennai

2. The Public Prosecutor
High Court
Madras-600 104.

+ 1 c.c. to Mr. R. Karthikeyan, Advocate. S.R.No.27323.

CRL.O.P.No.10719 of 2009

CU (CO)
GSK 10.07.2009.



WEB COPY