

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

CrI.O.P. No.1149 of 2015

and

M.P.No.1 of 2015

S.Muniappan

... Petitioner

vs.

1.The Inspector of Police,
Tiruchengode Town Police Station,
Namakkal District
(Crime No.132/2008)

2.T.R.Natesan

3.M.Rajavel

4.Sureshbabu

5.Senguottuvel

6.Rajamanickam

7.Sridhar

8.Thangavel

9.Rajavel

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside the order passed by the learned District Munsif cum Judicial Magistrate, Paramathy in CrI.M.P.No.2971 of 2014 in C.C.No.54 of 2010 dt. 08.10.2014.

For Petitioner : Mr.P.Mohamed Ansare

For 1st Respondent : Mr.V.M.R.Rajentren

Addl.Public Prosecutor

O R D E R

This petition is filed to set aside the order dated 8.10.2014 passed in CMP.No.2971 of 2014 in C.C.No.2010 by the learned Judicial Magistrate, Paramathy.

2. It is submitted by the learned counsel for the petitioner that the petitioner is the defacto complainant and was examined as PW.6. PW.1 to 3 were examined and they were treated as hostile. Having realised that the prosecution was not conducted properly, the petitioner filed Criminal O.P.No.29064 of 2010 for transfer of the case from the learned Judicial magistrate, Paramathy to any of the

Judicial Magistrates in Erode District. That petition was dismissed on 1.2.2011 with a direction to the Judicial Magistrate, Paramathy to complete the trial in C.C.No.54 of 2010 expeditiously. Thereafter, the petitioner persuaded the Assistant Public Prosecutor to file an Application to recall PW.1 to PW.3 and was under the bona fide impression that the Public Prosecutor would take necessary steps to recall PW.1 to PW.3. As no steps were taken up by the Public Prosecutor to recall PW.1 to PW.3 and PW.1 also informed the petitioner that he was forced by the accused to turn hostile and was prepared to give evidence regarding the happenings, the present petition is filed. He therefore submitted that the learned Judicial Magistrate, Paramathy, ought to have allowed the Application and permitted to recall PW.1 to PW.3 in the interest of justice.

3. Heard the learned Additional Public Prosecutor.

4. I am unable to accept the contention of the learned counsel for the petitioner. It is seen from the order passed by the learned Judicial Magistrate that PW.1 to PW.3 were examined on 1.2.2010 and the present petitioner was examined as PW.6 on 22.2.2010. It is also admitted that the present petitioner is a practicing advocate. The present petitioner being a defacto complainant did not take steps to recall PW.1 to PW.3 even though, it has been stated in the affidavit filed in support of Crl.O.P.No.29064 of 2010 that due to influence of the accused, some of the witnesses turned hostile and PW.1 was threatened by the accused to turn hostile and no steps were taken by him to recall PW.1 to PW.3 on that ground. Even in the petition filed before the trial Court to recall PW.1 to PW.3, nothing has been stated that the petitioner approached the Assistant Public Prosecutor for recalling PW.1 to PW.3 and was under the impression that Public Prosecutor would take steps to recall PW.1 to PW.3 and therefore, he did not file any Application for the past four years. The petitioner being a practicing advocate, having moved this Court and the Hon'ble Supreme Court for transfer of the case, could have filed an Application to recall PW.1 to PW.3, earlier, when he was aware that the witnesses were threatened and on that ground they turned hostile. In the affidavit of PW.1 filed in the typed set of papers sworn on 3.1.2014, it is only stated that, he was examined on 1.2.2010 and for four years, he has not bothered to give any complaint or to inform the petitioner about the threat exerted by the accused on him which have made him to turn hostile while he was examined as PW.1. After four years, he had sworn to the affidavit that he was threatened and therefore, he turned hostile. If such affidavits were taken into consideration and witnesses were recalled, there would not be any end to trial and that would amount to traversity of justice. As the petitioner kept quiet for four years in filing the Application, this Court has also directed the learned Judicial Magistrate, Paramathy, to complete the trial at the earliest. For the reasons stated above, I am not inclined to entertain the present petition at this stage.

5. Hence, the petition is dismissed. The learned Judicial Magistrate, Paramathy, is directed to complete the trial and pronounce the judgment within a period of four months from the date of receipt of a copy of this order. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asvm

To

1. The Judicial Magistrate,
Judicial Magistrate
Paramathy,
 2. -do- Through The Chief Judicial Magistrate,
Namakkal.
 3. The District Munsif cum
Judicial Magistrate,
Paramathy.
 4. The Inspector of Police,
Tiruchengode Town Police Station,
Namakkal District
(Crime No.132/2008)
 5. The Public Prosecutor,
High Court, Madras.
- + 1 cc to Mr.P. Mohamed Ansare, Advocate SR.9490

KK(CO)
Eu 05.03.15

CRL.O.P. No.1149 of 2015

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