

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.20469 of 2015

and

M.P.No.1 of 2015

K.Manivannan

...Petitioner

Vs

State Rep.by
Inspector of Police,
Periyanaickenpalyam Police Station,
Coimbatore.

...Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order passed by the Addl. Sessions Cum Special Judge for Bomb Blast cases, Coimbatore on 28.07.2015 in M.P.No.54 of 2015 in S.C.No.75 of 2011 and prays to set aside the same.

For Petitioner : Mr.R.Radha Pandian

For Respondent : Mr.C.Emalias
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order passed by the Addl. Sessions Cum Special Judge for Bomb Blast cases, Coimbatore on 28.07.2015 in M.P.No.54 of 2015 in S.C.No.75 of 2011 and prays to set aside the same.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. It is seen that the incident in this case took place on 20.09.2009 and 21.09.2009. The case of the prosecution is that the petitioner / A1 herein had conspired to commit the murder of one Roy.J.George. In the attack, Roy.J.George escaped death. The respondent police registered a case in Crime No.557 of 2009 and after completing the investigation, final report was filed before

the learned jurisdictional Magistrate and the case was committed to the Court of Sessions in S.C.No.75 of 2011 and the same is now pending on the file of the First Additional District and Sessions Judge, Bomb Blast cases, Coimbatore. From the year 2011 to 2015, the case was getting adjourned for some reasons or the other at the instance of the accused.

4. The trial commenced on 04.05.2015 with the examination of P.W.1, and 29 witnesses were examined up to 06.06.2015. The accused adopted dilatory tactics by not cross examining on the day, when the witnesses were examined in chief. P.W.1 was examined in Chief on 04.05.2015; was recalled on 20.05.2015 and cross examined by A12, A13, A24 to A27. Similarly, P.W.2 who was examined in Chief on 04.05.2015, was recalled and cross examined on 22.05.2015 by A12, A13, A24 to A27. P.W.3 and P.W.5 were examined in Chief on 04.05.2015, recalled on 25.05.2015 and cross examined by A12, A13, A24 to A27. Thereafter, P.W.19 to P.W.24 were examined in Chief on 26.05.2015 and they were cross examined by A12, A13, A24 to A27. Similarly, P.W.25 to P.W.28 were examined in Chief on 27.05.2015 and on the same day, A12, A13 and A24 to A27 cross examined them. P.W.29 was examined in Chief on 06.06.2015 and cross examined by A12, A13, A24 to A27 on the same day.

5. From the above, it is apparent that A1 to A11 have been adopting delaying tactics by not cross examining the prosecution the witnesses. When A1 to A11 filed an application under Section 311 Cr.P.C in Criminal M.P.No.54 of 2015 in S.C.No.75 of 2011, the trial Court, after due hearing, dismissed the petition on 28.07.2015 by a well considered order, wherein the trial Court has extracted the tactics adopted by the petitioner/accused in not cross examining the witnesses so as to tire them out. In fact, the trial Court has relied upon the recent judgment of the Hon'ble Supreme Court in Vinoth Kumar Vs. State of Punjab reported in (2015 (1) MLJ (Cr1.) 288), wherein the Hon'ble Supreme Court has issued a direction to all the trial Courts not to defer the cross examination of witnesses to another date. This Court and all the Subordinate Courts should have to implicitly obey the order of the Hon'ble Supreme Court without nothing more. Therefore, the trial Court was right in dismissing the petition filed under section 311 Cr.P.C. by the accused as it is obvious that they were deliberately not cross examining the witnesses though the co-accused have cross examined the witnesses. Challenging the order dated 28.07.2015 in Cr1.M.P.No.54 of 2015 passed by the trial Court, the accused are before this Court.

6. The learned counsel for the petitioner/accused submitted that the trial Court Advocate was hospitalized and therefore, the said witnesses could not be cross examined. It may be necessary to extract Section 309 (b) Cr.P.C

" 309.

(b) The fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment."

7. When such is the legal position, the reasons given by the learned counsel for the petitioner for not cross examining the prosecution witnesses cannot be countenanced. However, this Court is of the view that instead of permitting the recall of all the prosecution witnesses as prayed for by the petitioner, it will serve the interest of justice, if an opportunity is given to the petitioner/accused to cross examine the following witnesses viz., Sakthivel (P.W.1), Thirumurugan (P.W.2), Saraswathi (P.W.3), R.Shyam Sunder (P.W.4), R.Sowndarya (P.W.5) and Chittibabu (P.W.6) on the following conditions:

(i). The petitioner/accused shall pay a cost of Rs.1000/- (Rupees One Thousand only) to each of the witnesses, when they come for giving evidence to the Court.

(ii). The trial Court shall fix a date for recalling the aforesaid witnesses and on such date, the petitioner shall pay the cost and cross examine the witnesses.

(iii). If any of the witnesses have gone abroad or terminally sick, the trial Court need not recall them. If any witness has died in the meantime the accused should have to bear its consequences.

8. The trial Court shall ensure the safety of the witnesses and if any attempt is made to suborn the witnesses, the bail of the petitioner can be cancelled as held by the Hon'ble Supreme Court in State of Uttar Pradesh Vs. Shambhu Nath Singh (JT 2001 (4) SC 319)

9. It is seen that though 11 accused filed CrI.M.P.No. 54 of 2015, only Manivannan (A1) has approached this Court on behalf of all the 11 accused. Under these circumstances, the trial Court is directed to permit A1 to A11 to cross examine the aforesaid witnesses through their common counsel. If any one of the accused is absconding on the date of cross examination, when the witness is present, the trial Court shall not adjourn the case but should permit the other accused, who are present to cross examine the witness, so that, the witness need not be again recalled. Since this Court is monitoring the case, the trial Court shall complete this exercise within a period of two weeks from the date of receipt of a copy of this order.

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

For reporting compliance, post the matter on 07.09.20015.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

sms

To

1. Inspector of Police,
Periyanaickenpalyam Police Station,
Coimbatore.
2. The Addl. Sessions Cum Special Judge for Bomb Blast cases,
Coimbatore
3. The Public Prosecutor,
High Court, Madras.
4. The Section Officer,
Criminal Section,
High Court,
Madras - 104. (Post on 07.09.2015)

+1cc to R.Rathapandian Advocate sr.43433

Cr1.OP No.20469 of 2015
and
M.P.No.1 of 2015

CA (CO)
PSI (19.08.2015)

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