

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.09.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.No.21139 of 2015
and MP.No.1 of 2015

Babulal ... Petitioner

Vs

State rep by
The Inspector of Police,
J-6 Thiruvannamiyur Police Station,
Chennai. ... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C.,
praying to set aside the order dated 13.08.2015 in Crl.M.P.No.307/15
in SC.No.18 of 2011 on the file of the XVII Additional Sessions
Judge, Chennai and direct the trial court to permit the petitioner to
cross examine the PWs 2 to 5, 8 to 11 and 13.

For Petitioner : Mr.A.Ramkumar
For Respondent : Mr.C.Emalias, APP

O R D E R

This petition has been filed to set aside the order dated
13.08.2015 in SC.No.18 of 2011 on the file of the learned XVII
Additional Sessions Judge, Chennai and to direct the trial court to
permit the petitioner to cross-examine the PWs 2 to 5, 8 to 11 and 13.

2. Heard the learned counsel for the petitioner and perused the
materials placed on record.

3. On 25.08.2015, this Court passed the following order :

"Heard Mr.H.Rajasekar, learned counsel for the
petitioner.

2. The petitioner is facing trial in SC.No.18 of 2011
for offences under Section 452, 326, 307 [5] counts and 506
[ii] IPC. It appears that the petitioner absconded, after
he was examined under Section 313 Cr.P.C and non-bailable
warrant was issued on 09.07.2013. The petitioner was
arrested by the police after two years on 06.06.2015 and he
is in custody since then.

3. While so, the petitioner filed CrI.MP.No.307 of 2015 in SC.No.18 of 2011 for recalling PW1 to PW11 and PW13 for effective cross-examination. The Trial Court by a well considered order has dismissed the petition on 13.08.2015 narrating the entire sequence of events. It may be profitable to extract paragraph No.3 and 4 of the order passed by the Trial Court, wherein, the entire sequence of evidence have been explained.

"3. On perusal of records, it is noticed that PW1 to PW5 were examined on 28.02.2011 and PW6, PW7 was examined on 17.6.2011. PW8 was examined on 27.6.2011 and on that date the learned counsel for the petitioner refused to cross examine the witness. PW11 was examined on 21.7.2011 and PW12 was examined on 25.7.2011. PW13 was examined on 28.7.2011. PW6 and PW7 was examined in cross on 19.12.2011 and on 26.12.2011. Though PW1 to PW5 were present, the learned counsel was not ready to cross examine PW1 to PW5. On 2.1.2012 PW3 and PW4 were present and the counsel for the petitioner was not ready to cross examine PW3 and PW4. Consequently the evidence was closed on 10.1.2012. On 28.3.2012 PW2, PW3, PW4, PW5, PW9 and PW11 were examined in cross. On 31.08.2012 though PW1 was present, the learned counsel for the petitioner had endorsed 'No Cross'. On 21.01.2013, PW12 was examined in cross and on 1.4.2013 though PW13 was present in the court, the learned counsel for the petitioner was not ready to cross examine him and consequently the evidence of PW13 was closed.

4. On 3.8.2011, prosecution evidence was closed and accused was questioned u/s 313 Cr.P.C. Since 1.4.2013 the case was adjourned for defense witness. Since 9.7.2013 NBW was pending against the accused. The accused was produced before the court on 6.6.2015 after gap of two years. Till date he is under judicial custody from 6.6.2015. It is relevant to mention that this is not a first petition filed u/s 311 Cr.P.C. Earlier petition u/s 311 Cr.P.C was filed on 24.8.2011 to cross examine PW1 to PW13 and the same was allowed on 29.9.2011. On 6.2.2012 petitioner had filed another application u/s 311 Cr.P.C to recall PW1 to PW5, PW8 to PW13 and the same was allowed on 9.2.2012. On 9.2.2012 PW8 and PW10 alone were examined in cross. PW9 though present was not examined in cross. On 28.3.2012, PW2, PW3, PW4, PW5, PW9 and PW11 were present and were examined in cross and the case was adjourned to 4.4.2012 for cross examination of PW12 and PW13. On 4.4.2012 PW1

and PW2 were present and the accused absented himself. Consequently NBW was issued. Once again accused was released on bail on 11.7.2012 as per the orders of the Hon'ble Principal Judge. Subsequently, accused appeared on 19.7.2012 and though PW12 was present he did not choose to cross examine him. The case was then adjourned to 27.7.2012. Though PW1 was present on that day, the accused did not choose to cross examine him. Even on 27.7.2012 PW1 was terminally ill as he was suffering from cancer and could not stand in the witness box and walk. As on date PW1 is dead. Once again petitioner had filed another petition u/s 311 Cr.P.C [Crl.MP.180 of 2013] on 1.4.2013 to recall PW1, PW7 to PW10. The learned Judge had dismissed the application on contest. Upon that order petitioner had filed Crl.OP.No.10438 of 2013 and the Hon'ble High Court had dismissed the same on 23.04.2013 granting 3 months time to complete the trial from the date of receipt of the order copy. The order copy was received in the office of the City Civil Court on 3.6.2013. Since 14.6.2013 accused had absented himself and he was secured on warrant on 6.6.2015. His remand was extended to 12.6.2015, 2.7.2015, 13.7.2015. On 21.7.2015, this petition was filed. On 2.7.2015, the case was posted for arguments on which date the junior of the petitioner counsel appeared and sought an adjournment for letting defense witness on 13.7.2015. Since the list of defense witness was not produced, the case was adjourned to 21.7.2015. In the meantime on 15.7.2015, the Hon'ble Principal Judge had dismissed the bail application filed by the petitioner in Crl.MP.No.9599 of 2015. Subsequently, petitioner had approached the Hon'ble High Court in Crl.OP.No.17789 of 2015 and has also obtained order of bail. The Hon'ble High Court had directed this Court to dispose the case within one month. Since sufficient solvency is not produced the sureties were not accepted. The Hon'ble High Court had categorically stated in Crl.OP.No.10438 of 2013 as follows: "It is crystal clear that the petitioner is not interested in conducting the case and he is only protracting the matter. Therefore, no leniency should be shown to the petitioner as sufficient opportunities were given. Hence, there is no justification for allowing the criminal original petition and to set aside the orders of the Trial Court. The order of the Trial Court is valid and the same is confirmed."

4. From a reading of the order of the Trial Court, it is seen that this petitioner has cross-examined PW2, PW3,

PW4, PW5, PW9 and PW11 on 28.03.2012. As regards PW1, who was present in the court on 31.08.2012, learned counsel for the petitioner had endorsed no cross. This petitioner has also cross-examined PW12 on 21.01.2013.

5. Therefore, in the considered opinion of this Court, there is no infirmity in the order passed by the Trial Court warranting interference by this Court. This Court is of the view that the interest of justice will be served, if the petitioner/accused is permitted to cross-examine the investigating officer [PW13]. The learned Trial Judge is directed to complete the cross-examination of PW13 within one week, from the date of receipt of a copy of this order and send a report to this Court.

Post on 04.09.2015."

4. On 08.09.2015, the following order was passed :

"This Court has received report from the Trial Court. It is seen that PW13 appeared before the Trial Court on 07.09.2015 and he was only cross-examined in part. The case adjourned to 12.09.2015. PW13 is directed to be present before the Trial Court and subject himself to cross-examination by the defense.

2. Post on 15.09.2015 'for reporting compliance'."

5. Today, when the matter was taken up for reporting compliance, learned counsel for the petitioner submitted that PW13 was examined in-chief and was also cross-examined.

In view of the above, this petition is closed. Consequently, connected Miscellaneous Petition is closed.

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s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The XVII Addl. Sessions Judge, Chennai.

2. -do- thro' The Principal Sessions Judge, Chennai.

3. The Inspector of Police,
J6, Thiruvanniyur Police Station,
Chennai.

4. The Public Prosecutor,
High Court, Madras.

+ 1 cc to M/s.Surana and Surana Advocate SR 50610

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