

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2015
DELIVERED ON : 29.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.2966 of 2015
and M.P.No.1 of 2015

Ramalingam ... Petitioner

vs.

The Inspector of Police
CCIW CID, Thiruvallur. ... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in respect of the order dated 27.10.2014 passed in CMP No.6555 of 2014 in C.C.No.26 of 2006 on the file of the Judicial Magistrate-II, Ponneri and set aside the same.

For Petitioner : Mr.Dinesh Kumar

For Respondent : Mr.C.Emalias, APP

O R D E R

This petition has been filed to call for the records in respect of the order dated 27.10.2014 passed in CMP No.6555 of 2014 in C.C.No.26 of 2006 on the file of the Judicial Magistrate-II, Ponneri and set aside the same.

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

3. The petitioner is facing trial in C.C.No.26 of 2006 before the learned Judicial Magistrate-II, Ponneri. During the course of trial, the prosecution examined 13 witnesses from 2009 to 2011 and two years later, the accused were questioned under Section 313 Cr.P.,C. and at that juncture, the petitioner/accused filed an application under Section 311 Cr.P.C. in CMP No.6555 of 2014 to recall P.Ws.1 to 13, which was dismissed by the trial Court by a well considered order on 27.10.2014, aggrieved by which the petitioner/accused has approached this Court.

4. The learned counsel for the petitioner submitted that the order passed by the trial Court is not sustainable, in view of the various judgments of the Supreme Court which he relies upon. It is true that the petition under Section 311 Cr.P.C can be filed any

time before the judgment is delivered, but the Supreme Court has laid down the parameters and guidelines for entertaining a petition under Section 311 Cr.P.C. in Vijay Kumar vs. State of U.P. [2012 2 MLJ crl 284 SC].

5. In this case, as could be seen from the order passed by the trial court, the prosecution witnesses were cross examined as under:

S.No.	Prosecution Witnesses	Chief Examination	Cross Examination
1	P.W.1	27.07.2009	27.07.2009
2	P.W.2	06.08.2009	02.06.2011 07.07.2011
3	P.W.3	24.11.2009	07.07.2011
4	P.W.4	28.01.2010 30.01.2010	02.06.2011
5	P.W.5	28.01.2010	02.06.2011
6	P.W.6	13.05.2010	22.09.2011
7	P.W.7	20.05.2010	07.07.2011
8	P.W.8	02.06.2010	22.09.2011
9	P.W.9	16.09.2010	22.09.2010
10	P.W.10	16.09.2010	16.06.2010
11	P.W.11	16.09.2010	24.11.2011
12	P.W.12	28.10.2010	28.10.2010
13	P.W.13	24.02.2011	07.11.2013

6. The learned counsel for the petitioner submits that he has changed a new lawyer and hence, he seeks permission to recall the witnesses. Change of lawyer cannot be a ground for recalling witnesses, for, that will lead to travesty of justice. This Court cannot be oblivious to the facts adopted by the accused by recalling witnesses and make them turn hostile. This was noticed by the Supreme Court in Rajaram Prasad Yadav vs. State of Bihar [(2013) 8 Scale 316.].

In view of the law laid down by the Supreme Court, this Court finds no infirmity in the order passed by the trial Court and accordingly, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

To

- 1.The Inspector of Police, CCIW CID, Thiruvallur.
2. Judicial Magistrate-II, Ponneri.
- 3.The Public Prosecutor, High Court, Madras.

1 cc to Mr.R. Dinesh Kumar, Advocate, Sr. 24398

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