

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.9517 of 2015

& M.P.No.1 of 2015

M.Narayanasamy .. Petitioner/Petitioner

Vs

State rep. by its:
Inspector of Police,
Vigilance and Anti Corruption
Puducherry

... Respondent /Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crl.M.P. No.618 of 2015 in Spl.C.C.No.3 of 2013 on the file of the Learned District Judge/Special Judge under P.C.Act Cases Puducherry and set aside the order passed in Crl.M.P.No.618 of 2015 in Spl.C.C.No.3 of 2013 dated 07.04.2015 on the file of the Learned District Judge/Special Judge under P.C.Act Cases Puducherry and set aside the same.

For Petitioner :Mr.R.Karthikeyan

For Respondent :Mr.A.P.Thangavel,

Additional Public Prosecutor (Puducherry)

ORDER

The petitioner has come forward with this petition to quash the order dated 07.04.2015 in Crl.M.P. No.618 of 2015 in Spl.C.C.No.3 of 2013 passed by the Learned District Judge/Special Judge under P.C.Act Cases, Puducherry.

2. This petition has come up today for admission. I have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and I have also perused the records carefully.

3. It appears that the petitioner filed an application under section 311 of Cr.P.C for recalling P.W.6, who was examined on 7.11.2014. The petitioner/accused appears to have filed this application after the prosecution side was closed on 17.2.2015 and after the petitioner/accused was examined by the court under section 313(1)(b) Cr.P.C. It is also seen that two witnesses, namely D.W.1 and D.W.2 were examined on the side of the defence and some documents have been marked. By this time, when the petitioner filed application under section 311 Cr.P.C, the trial court allowed the same on condition that the petitioner should deposit a sum of Rs.50,000/- before the trial court on or before

9.4.2015. This Order was passed by the trial court on 7.4.2015. Therefore, the petitioner/accused did not have sufficient opportunity to get a certified copy of the order for challenging the same before this Court.

4. Nevertheless, the petitioner/accused applied for the copy of the order and received the same on 10.4.2015 and has filed this petition on 13.4.2015. In the mean time, the case was posted for trial on 15.4.2015 and since the petitioner did not deposit the sum of Rs.50,000/- as directed by the trial court, the petition itself was closed. It is also represented that the petition under section 317 Cr.PC filed for dispensing with the presence of the petitioner/accused was also dismissed and warrant has been issued against the petitioner.

5. The crux of the grievance of the allegation is that the order asking the petitioner to deposit Rs.50,000/- is erroneous. It is true that the petitioner/accused has made application belatedly after the defence witnesses were examined. Nevertheless, an application under section 317 Cr.P.C as maintainable at any time before the Judgment is dismissed. Now the question is, whether recalling of the said witness for Cross examination would be in the interest of Justice? When once the lower court found that the prayer of the petitioner/accused for recalling the said witness is just, in the considered opinion of this Court, it should not have imposed such an onerous condition.

6. Therefore, this Court is of the view that it will be in the interest of justice, if the petitioner/accused is directed to deposit a sum of Rs.20,000/- (Rupees twenty thousand only) before the trial court, on or before 27.4.2015. On such deposit, the petition in CrI.M.P. No.618 of 2015 in Spl.C.C.No.3 of 2013 shall stand restored and on the date fixed by the learned Judge, the petitioner shall cross-examine the witness, failing which the petition will stand automatically dismissed and the sum of Rs.20,000/- will stand forfeited to the State.

7. The witness seems to be a senior civil servant working in Hyderabad and therefore in the fitness of things, the entire amount of Rs.20,000/- shall be paid to him for meeting out the expenses.

8. It is seen that the trial court has also issued warrant against the petitioner and a prayer has been made by the learned counsel for the petitioner in this application for recalling the warrant. This Court is not inclined to order recall of Warrant in this application for, that will be exceeding the jurisdiction of this Court. The petitioner may surrender before the trial court, and the trial court, I am confident, will sympathetically consider the prayer of the petitioner and to recall the same.

9. The Criminal Original Petition is disposed of with the above direction. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

True Copy

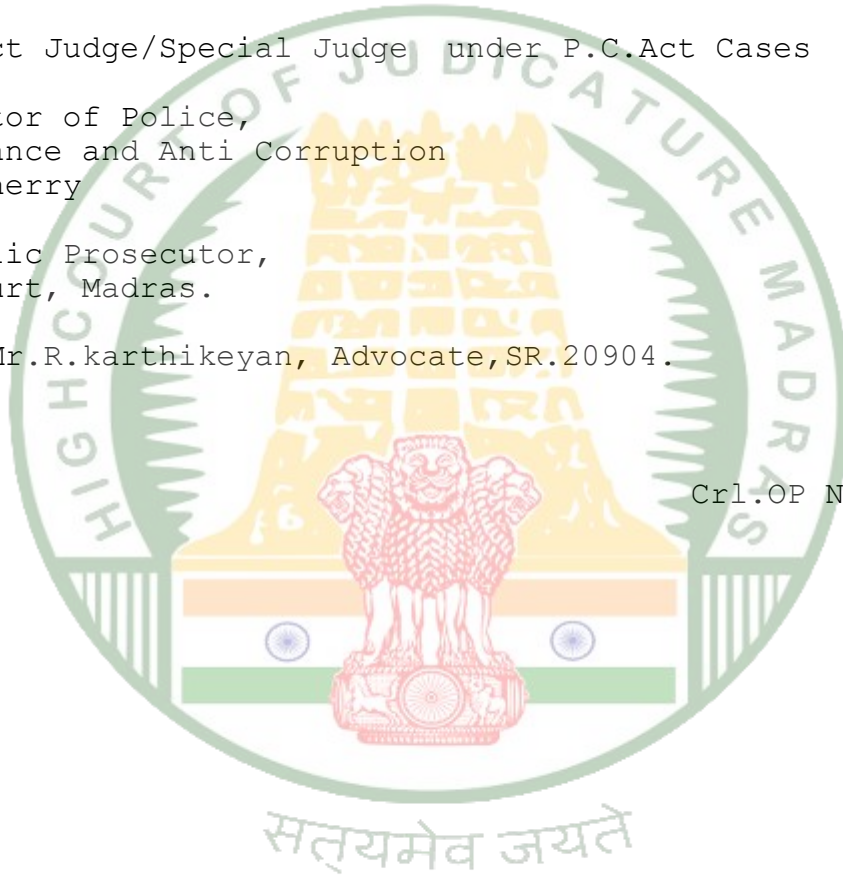
Sub Assistant Registrar

To

1. District Judge/Special Judge under P.C.Act Cases Puducherry
 2. Inspector of Police,
Vigilance and Anti Corruption
Puducherry
 - 3.The Public Prosecutor,
High Court, Madras.
- +1 cc to Mr.R.karthikeyan, Advocate,SR.20904.

tej(co)
krd 21/4

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