

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.10172 of 2016 and

Crl.M.P.No.5420 of 2016

Somasundaram

Petitioner/ Accused

Vs

State rep by
Inspector of Police
Central Crime Branch
Egmore, Chennai 600 008.

Respondent/ Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order passed by the learned III Metropolitan Magistrate, George Town, Chennai in Crl.M.P.No.565 of 2016 in C.C.No.3912 of 2007 dated 10.03.2016.

For petitioner : Mr.R.John Sathyan

For respondent : Mr.C.Emalias
Addl.Public Prosecutor

O R D E R

This petition has been filed to set aside the order passed by the learned III Metropolitan Magistrate, George Town, Chennai in Crl.M.P.No.565 of 2016 in C.C.No.3912 of 2007 dated 10.03.2016.

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

3. It is seen that this petitioner is the sole accused facing prosecution in C.C.No.3912 of 2007 for offences under Sections 467, 468, 471, 408 and 420 IPC before the learned III Metropolitan Magistrate, George Town. The prosecution examined ten witnesses on various dates and after the prosecution side was closed, the matter was posted to 04.03.2016 for examining the petitioner u/s 313 Cr.P.C.

4. At that juncture, the petitioner filed Crl.M.P.No.565/2016 in C.C.No.3912/2007 for recalling N.Manickam [P.W.4], N.Shanmugasundaram [P.W.5], Ramamoorthy [P.W.6] and Selvaraj [P.W.9]. After hearing the petitioner and the prosecution, the trial Court dismissed Crl.M.P.No.565/2016 on 10.03.2016, holding

that the petitioner was given opportunity to cross examine the witnesses twice, despite which he did not cross examine the witnesses. That apart, the trial Judge appears to have been exasperated with the conduct of the accused and has remarked as follows in the impugned order:

"4.The counsel having accepted the brief, in his professional ethics, should have made all efforts to cross examine the witness on the date when the witnesses were present. There is no material to show that the petitioner/accused has taken any action against his Advocate for not appearing and cross-examining the witness on the date when the witnesses were present. Therefore, the trial cannot be proceeded at the whims and fancies of the accused or his counsel."

5. Mr. John Sathyan, learned counsel appearing for the accused submitted that he has been defending the accused in this trial for over five years and that he has been diligent in prosecuting the case despite which the trial Judge, by the aforesaid remark, has cast a slur on his professional competence.

6. This Court is aware that Mr. John Satyan, is a hard working Advocate and is quite diligent in his professional work. However, the order of the trial Court dismissing the plea of the accused to recall P.Ws.4,5,6 and 9 cannot be said to be perverse, inasmuch as the trial of the case was pending since 2007. Two opportunities were given to the accused to cross examine the witnesses as stated above, which he did not avail of. This Court is of the view that it will serve the interest of justice if two of the witnesses, namely N.Manickam [P.W.4] and Shanmugasundaram [P.W.5] are recalled for the purpose of cross examination by the accused and it is ordered accordingly.

7. Learned Additional Public Prosecutor, on instructions from the respondent police, submits that those two witnesses are available and they can be produced for the purpose of cross examination before the trial Court.

8. Recording the above submission, this petition is partly allowed. Consequently, connected miscellaneous petition is closed. The petitioner is directed to deposit a sum of Rs.4,000/- [Rupees four thousand only] as costs [Rs.2,000/- per witness] within one week from the date of receipt of a copy of this order with the trial Court. On such deposit, the trial Court shall fix a date for recalling P.Ws.4 and 5, who shall be paid the costs and cross examined by the accused without adopting any dilatory tactics. Thereafter, the trial Court shall recall the Investigating Officer [P.W.10] for the purpose of cross examination by the accused. The entire exercise shall be completed before 20.07.2016.

Post on 25.07.2016 for reporting compliance.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

gms

To

1. The Inspector of Police
Central Crime Branch
Egmore, Chennai 600 008.

2. III Metropolitan Magistrate,
George Town, Chennai.

Copy to

The Section Officer
Criminal Section,
High Court, Madras

(For watching & Posting on 25.07.2016 for reporting compliance)

1 cc to Mr.R. John Sathyan, Advocate, Sr. 32932

Cr1.OP No.10172 of 2016

SV(CO)
kk 23/6

WEB COPY