

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.O.P.No.14947 of 2016
and
Crl.M.P.Nos.7423 and 7424 of 2016

Rajiv Naidu

... Petitioner/Accused

Vs.

The Inspector of Police,
CCB, Egmore,
Chennai - 600 008.

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to set aside the order dated 22.06.2016 in Crl.M.P.No.6185 of 2016 in C.C.No.2412 of 2012 passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.K.S.Dinakar, Senior Counsel
for M/s.Nithyaesh and Vaibhav

For Respondent : Mrs.M.F.Shabana,
Government Advocate (Crl.Side)

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सत्यमेव जयते
ORDER

This criminal original petition is filed by the petitioner/accused to set aside the order dated 22.06.2016 passed by the learned Chief Metropolitan Magistrate, Chennai, in Crl.M.P.No.6185 of 2016 in C.C.No.2412 of 2012, allowing the petition filed under Section 311 of Cr.P.C., to recall P.W.3 for further chief examination.

2. The learned Senior Counsel appearing for the petitioner would mainly contend that the petition under Section 311 of Cr.P.C. was filed by the prosecution to recall P.W.3 almost after 13 months. The trial Court erroneously allowed the said petition and held that since the defence has not cross examined

P.W.3, no prejudice would be caused to the accused. Hence, P.W.3 was ordered to be recalled for further chief examination. It is further submitted by the learned Senior Counsel that since the said order of the trial Court is erroneous, the order of the trial Court may be set aside and the criminal original petition may be allowed.

3. The learned Government Advocate (Crl.Side) would contend that at the time of examination of P.W.3, he has not been examined properly. The petition under Section 311 of Cr.P.C. was filed to recall P.W.3 for further chief examination stating that some important questions are omitted to be put to P.W.3. Hence, this criminal original petition may be dismissed and P.W.3 may be permitted to recall for further chief examination.

4. In this case, admittedly, P.W.3 was not cross-examined by the parties. Further, it is an admitted case of the prosecution that now, P.W.1 to P.W.8 are examined and after the examination of P.W.1 to P.W.8 alone, the petition under Section 311 of Cr.P.C. was filed to recall P.W.3 for further chief examination. Since some questions are omitted at the time of examination of witnesses, it is clearly proved that the prosecution, to fill up the lacuna in the evidence, wanted to recall P.W.3 for further chief examination. The finding of the trial Court that the defence will not be prejudiced, if P.W.3 was recalled for further chief examination to clarify the material points, which were omitted during the examination in chief, cannot be accepted. If the material points were omitted in the chief examination of P.W.3 and the prosecution wanted to fill up the above points in further chief examination, it will definitely affect the defence case and it would cause prejudice to the petitioner/accused. In this case, during the course of argument, the learned Senior Counsel appearing for the petitioner has produced a memo before this Court. In the said memo, at paragraph No.3, the petitioner has stated as follows:-

3. Therefore, as per the directions of this Hon'ble Court, the present memo is being filed. It is humbly submitted before this Hon'ble Court that the counsel for petitioner does not intend to recall the said P.W.3 namely Mr.Kanagarajan for cross-examination at any point of time in C.C.No.2412 of 2016 pending before learned Chief Metropolitan Magistrate, Egmore, Chennai. It is pertinent to mention that counsel for petitioner/Accused would not be prejudiced in any manner when PW3 namely Mr.Kanagarajan is not recalled for cross examination thereafter. Hence, this present memo is filed for the above said reasons by the counsel for petitioner/Accused.

5. On a reading of the memo filed by the petitioner, it is seen that the petitioner does not intend to recall P.W.3 for cross examination. Hence, cross-examination P.W.3 is not at all requires for defence. The petition was filed by the prosecution only to fill up the lacuna and it will totally affect the case of the defence side. In view of the above circumstances, the order of the trial Court allowing the petition filed under Section 311 of Cr.P.C. to recall P.W.3, is liable to be set aside.

6. In the result, the order dated 22.06.2016 passed by the learned Chief Metropolitan Magistrate, Chennai, in CrI.M.P.No.6185 of 2016 in C.C.No.2412 of 2012, is set aside and the criminal original petition is allowed. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Jrl

To

1. The Chief Metropolitan Magistrate,
Egmore, Chennai.
2. The Inspector of Police,
CCB, Egmore,
Chennai - 600 008.
3. The Public Prosecutor,
High Court, Madras.

+2 ccs to M/s.Nithyaesh and Vaibhav Advocate sr 47095

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