

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.07.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.15180 of 2016

and

CRL.M.P.No.7512 of 2016

1.Mohan @ Mohanraj
2.Murugan @ Pattymurugan
3.Padhu @ Padmanabhan
Petitioners

Vs.

State rep by
The Inspector of Police,
B-8, Variety Hall Road Crime Police Station,
Coimbatore.

..

..Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records of the order dated 30.06.2016 in C.M.P.No.60 of 2016 in S.C.No.284 of 2008 on the file of the III Additional Sessions Judge, Coimbatore and set aside the same.

For Petitioners : Mr.T.Karthick Srinath
for M/s.K.M.Vijayan Associates
For Respondent : Mr.C.Emalias, APP

O R D E R

This petition has been filed to set aside the order dated 30.06.2016 in C.M.P.No.60 of 2016 in S.C.No.284 of 2008 passed by the III Additional Sessions Judge, Coimbatore.

2. Heard the learned counsel for the petitioners; learned Additional Public Prosecutor appearing for the respondent and perused the materials placed on record.

3. It is seen that these petitioners are accused 3, 4 and 5 and are facing trial in S.C.No.284 of 2008 for offences under Section 395, 397, 120[b], 109 and 414 of IPC in respect of an alleged incident that has been taken place on 06.02.2003. The prosecution examined 34 witnesses and the accused were examined under Section 313 Cr.P.C. Thereafter, when the matter was posted for arguments, the petitioners filed Crl.M.P.No.60 of 2016 in S.C.No.284 of 2008 under Section 311 Cr.P.C. for recalling PW2, PW3 and PW14 for

further cross-examination. The trial Court, heard either side and dismissed the same on 30.06.2016. Challenging which, the petitioners are before this Court.

4. Mr.Karthick Srinath, learned counsel for the petitioners submitted that though 34 witnesses were examined and that the petitioners wanted to recall only three witnesses, namely, PW2, PW3 and PW14 and that a fair opportunity should be given to them for cross-examining the said witnesses.

5. Per contra, Mr.Emalias, learned Additional Public Prosecutor submitted that the case was posted for arguments and at that juncture, in order to delay the trial, the petitioners have filed the petition to recall the said witnesses.

6. This Court gave its anxious consideration to the rival submissions. The power of the trial Court to recall witness under Section 311 Cr.P.C. is available at any time before the final judgment is delivered. However, the power can be exercised only if it is shown to the Court that the evidence of the witness is essential to the just decision of the case. In this case, the petitioners in the petition under Section 311 Cr.P.C. had stated that they had not cross-examined PW2, PW3 and PW14. But, whereas from the records, it is seen that PW2 was examined in-chief on 20.02.2014 and on that day, the counsel for the petitioners have cross-examined PW2 and therefore, the contention of the petitioner that they have not cross-examined PW2 was found to be incorrect. Similarly, PW3 was also examined in-chief on 20.02.2014 and on that day, the counsel for A1 cross-examined PW3 and the counsel for the petitioners have endorsed that they have adopted his cross-examination. PW14 was examined in-chief on 20.11.2014 and he was cross-examined by the counsel for A1 and the counsel for the petitioners endorsed that they are adopting the cross-examination done by A1. Therefore, the contention of the petitioners that they have not cross-examined the witnesses is found be incorrect. That apart, the petitioners have not stated any other reason in the petition.

7. This is dacoity case of the year 2003 and it has survived till 2016, for some reason or the other. In A.G. Vs Shiv Kumar Yadav 2015[9] Scale 649, the Hon'ble Supreme Court has given the parameters for exercise of power under Section 311 Cr.P.C. The petitioners did have an opportunity to recall the witnesses, immediately after the close of the prosecution side and before they were examined under Section 313 Cr.P.C. They did not elect to file an application under Section 311 Cr.P.C. Thereafter, when the matter is posted for arguments, they have come up with the present petition for recalling the said witnesses. Under such circumstances, this Court does not find any infirmity in the order passed by the Court below.

In the result, the petition is devoid of merits and stands dismissed. Consequently, connected Miscellaneous Petition is closed.
gya

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The III Additional Sessions Judge,
Coimbatore.

2.The Inspector of Police,
B-8, Variety Hall Road Crime Police Station,
Coimbatore.

3.The Public Prosecutor, High Court, Madras.

+ 1 cc to M/s.K.M.Vijayan Associates, Advocate Sr 41207

KR/29/7/16

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