

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.08.2016

PRONOUNCED ON: 17.08.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CrI.O.P. No.17194 of 2016 & CrI.M.P. No.8238 of 2016

1	P. Krishnan	
2	K. Vishnusankar	
3	K. Sivagangai	
4	Krishnaveni @ Lalitha	Petitioners

VS.

State by the Inspector of Police CB-CID Police Nagapattinam Cr.No.11/2017	Respondent
---	------------

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to set aside the order passed in CrI.M.P. No.157/2016 in C.C. No.42/2011 dated 21.06.2016 by the Chief Judicial Magistrate, Nagapattinam.

For petitioners Mr. N. Sudharsan

For respondent Mr. C. Emalias
Additional Public Prosecutor

- - - - -

ORDER

This Criminal Original Petition has been filed seeking to set aside the order dated 21.06.2016 passed by the Chief Judicial Magistrate, Nagapattinam in Crl.M.P. No.157/2016 in C.C. No.42/2011.

2 The petitioners are facing prosecution in C.C. No.42/2011 before the Chief Judicial Magistrate Court, Nagapattinam for offences under Sections 120-B and 420 IPC. The prosecution examined P.W.1 to P.W. 57, whom the accused also cross-examined. While so, the accused filed Crl.M.P. No.157 of 2016 in C.C. No.42 of 2011 under Section 311, Cr.P.C. for recalling P.Ws.7,8,11,14,21,25 and 37 for the purpose of further cross-examination and for examining L.W. 11 and 43 as Court witness. The Trial Court, after hearing both sides, dismissed Crl.M.P. No.157 of 2016 on 21.06.2016, challenging which, the accused are before this Court.

3 Heard the learned counsel for the petitioners/accused and the learned Additional Public Prosecutor appearing for the respondent-State.

4 The learned counsel for the petitioners/accused submitted that further cross-examination of witnesses is very much relevant inasmuch as several important facts have to be elicited from those witnesses. In

support of this contention, he placed strong reliance upon the judgment of the Supreme Court in **Hoffman Andreas vs. Inspector of Customs, Amritsar [(2000) 10 SCC 430]**.

5 This Court gave its anxious consideration to the rival submissions.

6 In the aforesaid case relied on by the learned counsel for the petitioners/accused, the accused faced trial for offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and was sentenced to 10 years imprisonment by the Trial Court. It was brought to the notice of the Supreme Court that the counsel who was defending the accused died mid-way and a new counsel took up the brief and wanted to recall certain witnesses under Section 311, Cr.P.C., which was denied by the Trial Court. In that factual matrix, the Supreme Court set aside the conviction and sentence and remanded the case back to the Trial Court for recall of 3 witnesses for the purpose of cross-examination by the accused.

7 The situation in the case at hand is entirely different. The reason given by the accused in the petition filed under Section 311, Cr.P.C. is that they had changed their counsel and on account of that, they want the witnesses to be recalled.

8 It may be worth pointing out at this juncture that those witnesses whom the accused want to cross-examine, have been cross-examined by the earlier counsel and by mere change of counsel, if petitions under Section 311, Cr.P.C. are allowed, it will be an abuse of process of law.

9 In the petition filed by the petitioners/accused before the Trial Court under Section 311, Cr.P.C., they have not even given any other reason, except saying that further cross-examination is just and necessary for the just and fair decision of the case. The Trial Court has relied upon a recent judgment of the Supreme Court in **A.G. vs. Shiv Kumar Yadav and another, [2015 (9) Scale 649]**, wherein, the Supreme Court has succinctly laid down the law relating to recall of witnesses under Section 311, Cr.P.C.

10 In view of the reasoning and analysis made hereinabove, this Court does not find any infirmity in the impugned order passed by the Trial Court.

As a sequel, this Criminal Original Petition fails and is accordingly dismissed. Connected Crl.M.P. is closed.

17.08.2016

cad

To

- 1 The Inspector of Police
CB-CID Police
Nagapattinam
- 2 The Chief Judicial Magistrate
Nagapattinam
- 3 The Public Prosecutor
Madras High Court
Chennai 600 104

P.N. PRAKASH, J.

cad

Crl.O.P. No.17194 of 2016

17.08.2016