

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.10..2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Original Petition No.23035 of 2016
and Crl.M.P.No.10815 of 2016

Moorthy

... Petitioner/Accused

-Versus-

The State,

Rep. by The Inspector of Police,
South Police Station,
Tirupur District.
[Crime No.1055 of 2007]

... Respondent

Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to CRP No.12 of 2016 on the file of the Principal District and Sessions Judge, Tirupur, and to quash the order dated 05.07.2016 passed thereon by the learned Principal District and Sessions Judge, Tirupur, confirming the order of the learned Judicial Magistrate No.II, Tirupur, dated 18.01.2016 made in CMP No.5549 of 2015 in CC No.281 of 2007.

For Petitioner : Mr.E.D.Sethupathi

For Respondent : Mr.C.Emalias, APP

ORDER

The respondent police has registered a case in Crime No.1055 of 2007 against the petitioner for offences under Sections 279 and 304-A of IPC and after completing investigation filed a final report in C.C.No.281 of 2007 before the learned Judicial Magistrate No.II, Tirupur. The petitioner appeared before the trial court and charges were framed against him. P.Ws.1 and 2 were examined in chief on 25.09.2008. It appears that subsequently P.Ws.3, 4 and 6 were examined in full. But, P.W.5, who was examined on 14.07.2009, and P.W.7, who was examined on 02.02.2011, were not cross examined by the accused. Thereafter, the petitioner absconded on 30.09.2013 on account of which a non bailable warrant was issued. Only in the year 2015, he surrendered himself and the non bailable warrant issued against him was recalled by the learned Magistrate. Then, the petitioner filed a petition under Section 311 of Cr.P.C. for recalling all the witness on the short ground that he has changed his counsel. The trial court dismissed the petition on 18.01.2016 challenging which the petitioner preferred a revision before

the Principal Sessions Judge, Tirupur. But, the petitioner did not choose to prosecute the same further. Therefore, the learned Sessions Judge dismissed the revision petition for default on 05.07.2016. Aggrieved by the said order, the petitioner is now before this court with the present petition.

2. At the outset an order dismissing the petition under Section 311 of Cr.P.C. is an interlocutory order and no revision will lie as against the same in view of the bar contained in Section 397 (2) of Cr.P.C. However, the power of this court under Section 482 of Cr.P.C. is always available in deserving cases. The incident in the instant case had taken place in the year 2007 and from 2007 to 2013, the witnesses were examined by the prosecution. The petitioner absconded from 2013 and only in the year 2015, he surrendered before the court. Thereafter the petitioner filed a petition to recall the witnesses under Section 311 of Cr.P.C. on the ground that he has changed the counsel. In State of Haryana vs. Ram Mehar, (2016) 8 Scale 192, the Supreme Court has followed the earlier judgement in State [NCT of Delhi] Vs. Shivkumar Yadav, (2016) 2 SCC 402 and held that that change of counsel cannot be a reason to recall the prosecution witnesses. In this case, from the year 2007 to 2016, the accused has managed to prolong the case by adopting dilatory tactics and, therefore, he will not be entitled to any indulgence at the hands of this court.

3. In the result, the criminal original petition devoid of merits and the same is accordingly dismissed. Consequently, connected MP is closed.

Sd/-
Asst. Registrar

/ true copy /

Sub Assistant Registrar

kmk

To

- 1.The Principal District and Sessions Judge, Tirupur.
- 2.The Judicial Magistrate No.II, Tirupur.
- 3.The Chief Judicial Magistrate, Tirupur.
- 4.The Inspector of Police, South P.S., Tirupur District.
- 5.The Public Prosecutor, High Court, Madras

1 cc to Mr.E.D.Sethupathi, Advocate vide SR.No 59077

Cr1.O.P.No.23035 of 2016

GJ(CO)

CS 12/11/2016

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