

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

Crl.O.P.No. 3614 of 2016

Chinnasamy

.. Petitioner

Vs

State Represented by
Deputy Superintendent of Police,
SPE/ACB/CBI,
Chennai.

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., praying to set aside order dated 18.01.2016 passed in Crl.M.P.No.3330 of 2015 in C.C.No.8650 of 2000 pending on the file of the Additional Chief Metropolitan Magistrate, Egmore at Chennai.

For Petitioner :Mr.S.P.Meenakshi Sundaram

For Respondent :Mr.K.Srinivasan
Special Public Prosecutor
for CBI cases

ORDER

A3 in C.C.No.8650 of 2000 on the file of the learned Additional Chief Metropolitan Magistrate, now at Allikulam, erstwhile Moormarket seeks to set aside the order dated 18.01.2016 of the said Court, where under the order passed to recall certain P.Ws. under section 311 of Cr.P.C. has not been permitted.

2. A3 is being prosecuted in the said Court for his alleged commission of certain offences along with certain others. Several prosecution witnesses were examined. A3 has deferred their cross examination. Now A3 has chosen to cross examine P.W.15, P.W.20, P.W.22, P.W.23, P.W.27, P.W.30, P.W.78, P.W.111 and P.W.112. The trial Court allowed his Crl.M.P.No.3330 of 2015 filed under section 311 Cr.P.C. on 31.12.2015 and directed A3 to pay witness bata. On 18.1.2016, the Judge has declared that A3 has lost the opportunity to enjoy the fruits of the said order as he has not taken steps.

3. The learned counsel for the petitioner submits that he may be given an opportunity and he will not indulge in any delaying tactics.

4. Heard the learned Special Public Prosecutor for CBI.

5. I have considered the rival submissions.

6. There are two things. One is the right of the accused. The other one is the duty of the prosecution to produce the witnesses. The right of the accused to defend him effectively should be facilitated. But, at the same time, the accused should not misuse that right to drag on the trial.

7. Now that accused has chosed to cross examine the witnesses, P.W.15, P.W.20, P.W.22, P.W.23, P.W.27, P.W.30, P.W.78, P.W.111 and P.W.112, who have stated to be deposed in chief examination. In exercise of his right of defence, A3 feels that they are required to be tested through cross examination. In such circumstances, he is required to be given an opportunity.

8. In the circumstances, the order dated 18.1.2016 passed by the Additional Chief Metropolitan Magistrate, Egmore in C.C.No.8650 of 2000 taking away the right of the accused to recall the witnesses is set aside. The petitioner will deposit the witness bata on or before 22.2.2016.

9. Accordingly, this Criminal Original Petition is disposed of.
vrc

-s/d-

Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Additional Chief Metropolitan Magistrate, Allikulam, Chennai.
2. The Special Public Prosecutor, for CBI Cases, High Court, Madras.
3. Deputy Superintendent of Police, SPE/ACB/CBI, Chennai.
4. The Additional Chief Metropolitan Magistrate, Egmore at Chennai.

+ 1 cc to Mr.D.Bennington, Advocate SR 10458

ak(co)prk19/2

CrI.O.P.No. 3614 of 2016