

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.7227 of 2016
and Crl.M.P.No.3775 of 2016

Saravanan .. Petitioner

Vs.

State by
Sub-Inspector of Police
C-2 Sunguvarchatram police station
Sriperumbudur Taluk
Kancheepuram District.
Crime No.368/2006 ... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to set aside the impugned order passed against the petitioner/accused in C.M.P.No.1869 of 2015 in C.C.No.747 of 2008 on the file of the learned District Munsif-cum-Judicial Magistrate at Sriperumbudur dated 22.01.2016.

For Petitioner :Mr.R.Rajasekaran
For Respondents :Mr.C.Emalias
Addl. Public Prosecutor

O R D E R

The petitioner has come forward with this petition to set aside the impugned order passed against the petitioner/accused in C.M.P.No.1869 of 2015 in C.C.No.747 of 2008 on the file of the learned District Munsif-cum-Judicial Magistrate at Sriperumbudur dated 22.01.2016.

2.The petitioner has been arrayed as an accused and facing criminal trial for the offences punishable under Section 374 IPC read with Sections 9, 16, 17, 18 of the Bonded Labour System (Abolition) Act, 1976. P.W.1/complainant, P.W.2/Deputy Tahsildar and P.W.3/investigating officer have been examined. The prosecution has already dispensed with the witnesses L.W.2 to L.W.5. Thereafter, the prosecution has filed an application for recall L.W.2 and L.W.4 stating that since their whereabouts were not known, the above witnesses were dispensed with and now they came to know that the witnesses were available. The said application was allowed on 22.01.2016, challenging the same the present petition is filed by the accused.

3. Learned counsel for the petitioner submits that P.W.3/investigating officer was examined on 24.08.2015. Thereafter, the prosecution has filed the application for recall L.W.2 and L.W.4, who are husband and wife, are none other than the victims of the bonded labour. So there is no necessity for recall them and it will affect the fundamental rights of the accused persons, since the investigating officer has already been examined. But that factum was not considered by the trial Court. Hence, he prays for setting aside the impugned order passed by the trial Court.

4. Resisting the same, learned Additional Public Prosecutor submits that official witnesses alone have been examined and the victims of bonded labour were not examined. The prosecution had dispensed with L.W.2 to L.W.5, since their whereabouts were not known. Now the prosecution came to know that the witnesses L.W.2 and L.W.4 belong to the same village and settled there. Under such circumstances, it is the duty of the prosecution to examine L.W.2 and L.W.4. He further submits that in para-6 of the order, the trial Court held that to give substantial justice, the witness can be recalled at any point of time. Hence, he prays for dismissal.

5. Considered the rival submissions made on both sides and perused the typed set of papers.

6. The petitioner herein has been arrayed as an accused in C.C.No.747 of 2008 for the offences punishable under Sections 374 IPC read with Sections 9, 16, 17, 18 of the Bonded Labour System (Abolition) Act, 1976. The official witnesses alone have been examined as P.W.1 to P.W.3. But the victims of bonded labour were not examined. The prosecution after conducting enquiry identified L.W.2 to L.W.5 as bonded labourers and thereafter issued the release certificate by order dated 31.01.2006. During the prosecution side evidence, the above persons were not traceable and therefore, they are dispensed with. After the prosecution came to know the whereabouts of the witnesses L.W.2 and L.W.4, they have come forward with the petition for recall them on 02.09.2015 stating that to prove the guilt of the accused/petitioner herein, victims of bonded labour have to be examined.

7. At this juncture, it is appropriate to consider the decision reported in AIR 1991 SC 1346 (Mohanlal Shyamlal Sony v. Union of India and another), wherein our Honourable Apex Court held that "the criminal Court has ample power to summon any person as a witness or recall and reexamine any such person if the evidence on both sides is closed and the jurisdiction of the Court and must obviously be dictated by the exigencies of the situation and fair play and good sense

appear to the only face guide and that only the requirement of the justice command the examination of any person which would depend on facts and circumstances of each case." By applying the above dictum, the trial Court allowed the petition filed by the prosecution.

8.Considering the aforestated facts and circumstances of the case, since the case pertains to the bonded labour, its victims are the competent persons to speak about that whether they are bonded labourers or workers and whether they met out any torture at the hands of their employer and the same have to be decided only after their examination. Even though the learned counsel for the petitioner submits that recalling the witnesses may cause prejudice to the fundamental rights of the petitioner/accused, in my view, the above argument does not hold good. The trial Court in para-6 of its order came to the correct conclusion and rightly allowed the petition. Therefore, I do not find any merits in the petition and the Criminal Original Petition deserves to be dismissed and it is hereby dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

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To

1.The District Munsif-cum-Judicial Magistrate at
Sriperumbudur.

2.-do- Through The Chief Judicial, Magistrate,
Kancheepuram.

3.The Sub-Inspector of Police
C-2 Sunguvarchatram police station
Sriperumbudur Taluk
Kancheepuram District.

4.The Additional Public Prosecutor
High Court, Chennai.

+ 1 cc to MR.R. Rajasekaran, Advocate Sr.20744

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and Cr1.M.P.No.3775 of 2016

RSY(CO)
Eu 13.04.16