



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2016

CORAM

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THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.OP(MD) No.5875 of 2016

and

Crl.M.P. (MD) No.2901 of 2016

Ganesan

..Petitioner

Vs

The Sub-Inspector of Police,
Kallidaikurichi Police Station,
Tirunelveli District.

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order of the learned Judicial Magistrate, Ambasamudram made in Cr.M.P.No.907/2016 in C.C.No.117/2013, dated 10.02.2016 and direct to recall all Pws for cross-examination.

For Petitioner : Mr.V.Angusamy

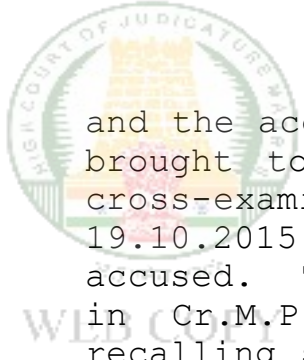
For Respondent : Mr.A.P.Balasubramani
Government Advocate (Crl.Side)

O R D E R

This petition has been filed to set aside the order of the learned Judicial Magistrate, Ambasamudram made in Cr.M.P.No.907/2016 in C.C.No.117/2013, dated 10.02.2016 and direct to recall all Pws for cross-examination.

2. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the State.

3. It is seen that the petitioner is facing prosecution for offences under Section 294(b) I.P.C. and Section 4 of TNPHW Act in C.C.No.117 of 2013, before the learned Judicial Magistrate, Ambasamudram. The prosecution examined 8 witnesses and the accused did not choose to cross-examine the witnesses on the day when they are examined in chief and thereafter the accused filed an application to recall the witnesses under Section 311 Cr.P.C. and the same was allowed by the trial Court on 14.10.2014, pursuant to which on 24.02.2015, P.W.1 was present in the Court



and the accused did not cross-examine P.W.1. P.W.2 and P.W.3 were brought to the Court on 08.10.2015. Then the accused did not cross-examine the witnesses. P.W.4 was brought to the Court on 19.10.2015 and again there was no cross-examination by the accused. Thereafter the accused has filed the present application in Cr.M.P.No.907 of 2016 in C.C.No.117 of 2013 once again recalling some witnesses, which was rightly dismissed by the trial Court, relying upon the judgment of the Honourable Supreme Court in Vinodkumar Vs. State of Punjab reported in 2015(1) MLJ 288 (SC). Challenging the said order, the accused is before this Court.

4. The learned Counsel for the petitioner for the accused strongly placed reliance upon the decision of the Honourable Supreme Court in P.Sanjeeva Rao Vs. State of Andhra Pradesh reported in (2012)7 Supreme Court Cases 56.

5. On a careful scrutiny of the facts obtaining in the said case, it is seen that it is the case relating to laying of a trap by Anti-corruption Bureau, in which the accused was trapped by the Officers. During the trial, the prosecution examined the defacto complainant and one trap witness and the learned Counsel appearing for the accused filed defer cross application contending that he will cross-examine P.Ws.1 and 2, after the Trap Laying Officer was examined. Thereafter the accused filed an application under Section 311 Cr.P.C. The trial Court dismissed that application, pursuant to which he came to the Honourable Supreme Court. The Honourable Supreme Court allowed the application on the strength of the affidavit said to have been filed by the Counsel himself before the court below that at his request, the examination was deferred. Therefore, the facts obtaining in that case cannot be followed in the present case. In this case the petitioner/accused was given opportunity twice viz., when the witnesses were examined in chief and subsequently, he filed an application under Section 311 Cr.P.C., which was allowed on 14.10.2014, pursuant to which, the witnesses were came to the Court, but they were not cross-examined by the accused. Therefore, this Court does not find infirmity in the order passed by the trial Court. Accordingly, this Criminal Original Petition is devoid of merits and the same is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar

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To

1. The Sub-Inspector of Police,
Kallidaikurichi Police Station,
Tirunelveli District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.V.Angusamy, Advocate, Sr.No.19768

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JM/AAL-MPA/25.04.2016/3P-4C

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and
Cr1.M.P. (MD) No.2901 of 2016
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