

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2017

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.6892 of 2017

Raja @ Elayaraja

... Petitioner/Accused

Vs

The State rep. by
the Inspector of Police
Nagapattinam Town Police Station,
Nagapattinam District.

... Respondent/Complainant

Criminal Original Petition filed under Section 482
Cr.P.C. to set aside the order passed by the learned Sessions
Judge, Nagapattinam, Nagapattinam District in Crl.MP.No.7 of
2017 in SC No.48 of 2011 dated 07.03.2017.

For Petitioner : Mrs.Greetha Senthilkumar

For Respondent : Mr.C.Emalias, APP

ORDER

This Criminal Original Petition has been filed to set
aside the order dated 07.03.2017 passed by the learned Sessions
Judge, Nagapattinam, Nagapattinam District in Crl.MP.No.7 of
2017 in S.C.No.48 of 2011.

2. The case of the petitioner is that he was charge
sheeted by the respondent police for the offence under Section
302 IPC. The said charge sheet culminated as SC No.48 of 2011 on
the file of the learned Sessions Judge, Nagapattinam,
Nagapattinam District. Thereafter, trial has commenced, during
the course of which, P.W.1 to P.W.11 were examined in chief,
but, they were not cross examined on the defence side. Hence,
the petitioner filed a petition in CMP.No.7 of 2017 under
Section 311 Cr.P.C to recall those witnesses for the purpose of
cross examination. However, by order dated 07.03.2017, the
learned Sessions Judge dismissed the said petition. Aggrieved
over the dismissal of Section 311 Cr.P.C petition, the
petitioner has come up with the present petition.

3. Learned counsel for the petitioner submitted that due to boycott of the court proceedings by the Advocates, the petitioner was unable to cross examine P.W.1 to P.W.11, as such, the non-cross examination of those witnesses is neither wilful nor wanton. However, without considering the same, the trial court has dismissed the petition filed by the petitioner under Section 311 Cr.P.C.

4. On the other hand, learned Additional Public Prosecutor appearing for the respondent submitted that the learned Sessions Judge has afforded reasonable opportunity to the petitioner to cross examine those witnesses, but the petitioner failed to utilise the same. Further, learned Additional Public Prosecutor submitted that the petitioner has filed Section 311 Cr.P.C petition belatedly with an intention to drag on the proceedings.

5. Heard both sides and perused the records.

6. It is seen from the impugned order that P.W.1 to P.W.3, P.W.4 to P.W.6, P.W.7, P.W.8, P.W.9, P.W.10 and P.W.11 were examined in chief on 10.08.2016, 18.08.2016, 24.08.2016, 15.09.2016, 22.09.2016, 01.11.2016 and 28.11.2016 respectively. However, they were not cross examined by the defence side on those days, which is according to the petitioner, due to boycott of the court proceedings by the Advocates. Such reason assigned by the petitioner has not been accepted by the learned Sessions Judge for entertaining the Section 311 Cr.P.C petition. This Court also finds no reason to disagree with the view so taken by the learned Sessions Judge.

7. At this juncture, the learned counsel for the petitioner submitted that in order to establish the case of the petitioner, it is but necessary to recall P.W.1 to P.W.4 and P.W.6 alone, who are the material witnesses, for the purpose of cross examination. Therefore, learned counsel restricted the relief sought for in the petition to the extent of recalling P.W.1 to P.W.4 and P.W.6 alone. The petitioner has also filed a memo dated 09.06.2017 to that effect.

8. In view of the above submission made by the learned counsel for the petitioner and the memo so filed by the petitioner, this Court, in order to provide an opportunity to the petitioner, is inclined to set aside the order impugned herein to that extent.

9. Accordingly, the order dated 07.03.2017 passed by the learned Sessions Judge, Nagapattinam, Nagapattinam District in CMP.No.7 of 2017 in SC No.48 of 2011, is set aside insofar as

P.W.1 to P.W.4 and P.W.6 alone are concerned. The petitioner is permitted to recall P.W.1 to P.W.4 and P.W.6 for the purpose of cross examination on 21.06.2017 and complete the same on that day itself. It is made clear that no further adjournment be granted to the petitioner and no further Section 311 Cr.P.C petition be entertained by the trial court.

10. This Criminal Original Petition is disposed of in the above terms.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge, Nagapattinam,
Nagapattinam District.
2. The Inspector of Police
Nagapattinam Town Police Station,
Nagapattinam District.
3. The Public Prosecutor,
High Court, Madras - 104.

+1 CC to Mrs.Greetha Senthilkumar, Advocate sr 41119

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GP(CO)
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