

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

CrI.O.P.No.22156 of 2014
and CrI.M.P.No.2046 of 2017

Semalaiyappan
S/o.Late Poovaan

... Petitioner

Vs.

1. Palanichamy
S/o.Nachimuthugounder
2. Kandasamy
S/o.Duraisamy
3. Dhandapani
S/o.Semalaiyappan
4. Thangavel
S/o.Palanichamygounder
5. Eswaramoorthy
S/o.Chellamuthu
6. Shanmugam
S/o.Ayimuthu @ Muthusamy
7. Stalin Murugesan @ Veerakumar
S/o.Kumarasamy
8. Ponnusamy
S/o.Palanichamygounder @ Unchakaattar
9. Sodakkdai Subramani @ Balasubramaniam
S/o.Ramasamygounder
- 10.Karikalan
S/o.Sodakadai Subramani @ Balasubramaniam
- 11.Govindhammal
W/o.Chellakutti @ Chellamuthu
- 12.State by
The Inspector of Police,
Vellakkovil Police Station,
Tiruppur District.

... Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for records in connection with the order dated 27.03.2014 passed in Cr.M.P.No.426 of 2014 in Spl.S.C.No.1 of 2013 on the file of learned Special Judge (Principal Sessions Judge), Tiruppur District constituted under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and set aside the same and consequently, allow the above Cr.M.P.No.426 of 2014.

For Petitioner : Mr.S.Sathia Chandran

For Respondents: Mr.V.Raghavachari [R1 to R11]
Mr.B.Ramesh Babu
Government Advocate [Crl.side]
[R12]

O R D E R

Petitioner challenges the order of learned Special Judge (Principal Sessions Judge), Tiruppur District constituted under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, passed in Cr.M.P.No.426 of 2014 in Spl.S.C.No.1 of 2013 on 27.03.2014.

2. Petitioner preferred a complaint before the twelfth respondent against respondents 1 to 11, based on which a case was registered in Crime No.2602 of 2010 for offences u/s.147, 323 IPC and 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Upon completion of investigation, the case was taken on file in Spl.S.C.No.1 of 2013 on the file of learned Special Judge (Principal Sessions Judge) under SC/AT (POA) Act, Tiruppur. State has moved Cr.M.P.No.426 of 2014 in Spl.S.C.No.1 of 2013 seeking recall of PWs.1 to 11 for further examination. Court below, under the impugned order, dismissed such petition. Hence, this revision.

3. Heard learned counsel for petitioner, learned counsel for respondents 1 to 11 and learned Government Advocate [Crl.side] for the State.

4. Learned counsel for petitioner submits that the order of the Court below refusing recall of witnesses towards their further examination by the Special Public Prosecutor appointed by this Court under orders in Crl.O.P.No.22043 of 2013 dated 26.09.2013 is erroneous.

5. Learned counsel for respondent refers to the order of this Court passed in Crl.O.P.No.10679 of 2014 dated 14.08.2014

and submits that time and again, petitioner had approached the Court with one application or the other and in disposing of Crl.O.P.No.10679 of 2014, this Court had rejected a claim for denovo trial and permitted examination of only PWs.11 and 12 in the case. The accused in the case ought not to be put to repeated harassment.

6. This Court finds that under orders in Crl.O.P.No.10679 of 2014 dated 14.08.2014, this Court had refused denovo trial but permitted examination of PWs.11 and 12 expressing the view that their examination before the Court below was in violation of a direction of this Court. The order cannot be read as one which would not permit recall of witnesses. Under orders in Crl.O.P.No.22043 of 2013 dated 26.09.2013, this Court had permitted appointment of Mr.B.Mohan, Senior Advocate, as the Special Public Prosecutor. On such counsel coming on record, a petition for recall of witnesses has been moved and the same has been dismissed by Court below under the impugned order. The very purpose of appointment of the particular Special Public Prosecutor would be lost if an opportunity of examination of witnesses by him is not made available. Even as this Court states so, this Court takes note of the concern of learned counsel for respondents 1 to 11 that the re-examination of witnesses could be used towards wrongful purpose for filling up the lacuna in the evidence. This Court would observe that the trial Court would be well within its rights in guarding against such situation. It is brought to notice that pursuant to order in Crl.O.P.No.10679 of 2014 dated 14.08.2014, PWs.10 and 11 were recalled and re-examined. Therefore, the present order shall apply only regards PWs.1 to 9.

The Criminal Original Petition shall stand allowed. The order of learned Special Judge (Principal Sessions Judge), Tiruppur District constituted under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, passed in Cr.M.P.No.426 of 2014 in Spl.S.C.No.1 of 2013 on 27.03.2014, shall stand set aside. The exercise of recall and re-examination of PWs.1 to 9 will be completed by Court below within a period of two weeks from the date of receipt of this order. The undertaking of learned counsel for petitioner that petitioner will co-operate in compliance with this order is recorded. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Special Judge
(Principal Sessions Judge),
Tiruppur District.
2. The Inspector of Police,
Vellakkovil Police Station,
Tiruppur District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Sathia Chandran, Advocate, S.R.No.18573
+2cc's to Mr.V.Raghavachari, Advocate, S.R.Nos.18511 & 18633

Crl.O.P.No.22156 of 2014

KJI (CO)
CA(06/04/2017)



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