

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.11.2017

Coram:

The Hon'ble Dr.Justice G.Jayachandran

Crl.O.P.No.24793 of 2017

M.Varadharajulue .. Petitioner

/versus/

The State Rep.by
The Inspector of Police,
CBI/EOW/Chennai .. Respondent

Criminal Original Petition is filed under Section 482 of Cr.P.C. against the order dated 22.09.2017 made in Crl.M.P.No.3357 of 2017 in C.C.No.36 of 1998 on the file of the VIII Additional City Civil and Sessions Judge for CBI Cases, Chennai.

For Petitioner :Mr.Ramakrishnan for
M/s Waraon and Sai Rams

For Respondent :Mr.K.Srinivasan,
Spl.PPfor CBI cases

ORDER

This petition is filed to set aside the order of the trial Court dated 22.09.2017 dismissed the application filed by the petitioner herein under Section 311 Cr.P.C., to recall the witnesses Pws. 1, 5, 10, 11, 13,

15, 17, 21 and Pws.30, 32, 33, 34, 42, 46, 51, 57, 60, 61 and 70 to 73 in C.C.No.36 of 1998 and permit the petitioner to cross examine the said witnesses.

2. The petitioner herein M.Varadharajulu, who is arrayed as A27 in C.C.No.36 of 1998 had filed a petition under Section 311 Cr.P.C., before the trial Court seeking indulgence of trial Court to recall 22 witnesses for subjecting themselves to be cross examined by the petitioner.

3. The said petition was strongly opposed by the prosecution on the ground that these witnesses were examined in the year 2008 to 2013 and the petitioner had given ample opportunity to cross examine these witnesses. However, other counsels have cross examined these witnesses and availed the opportunity. But, the petitioner did not wantonly cross examine these witnesses and after closure of prosecution side witness and questioning under Section 313 Cr.P.C. is over by 30.08.2016, the petition is filed to recall 22 witnesses.

4. Considering the fact of the case, the trial Court has

dismissed the petition. The reason stated by the trial Court is extracted below for better appreciation:

"On the perusal of main case records, it is seen that the petitioner is the 27th accused in this case and the case is pending from the year 1998. In this case, the prosecution has examined PW1 to PW73 and marked Exs.P1 to P440 and Section 313 Cr.P.C questioning were completed on 30.08.2016. Now, the case is posted for defence side arguments. In the meanwhile, some of the witnesses were cross examined by the other accused persons. Sufficient opportunities were given to the petitioner for cross examining the witnesses. The petitioner filed this petition only to drag on the proceedings and wilfully not cross examined the witnesses. It is also pertinent to note that the Hon'ble Supreme Court of India has directed to dispose of the pending cases for more than years. Therefore, the petitioner is not entitled to get the relief at the stage of arguments. In the result, this petition is dismissed."

5. Thus, the trial Court has perused the records and found that the prosecution had examined 73 witnesses and questioning the accused under Section 313 Cr.P.C., is also over by 30.08.2016. Some of the accused persons have sought for recalling of few witnesses and that was also allowed and those witnesses were cross examined. After

completion of prosecution side witnesses and questioning under Section 313 Cr.P.C, this petitioner has leisurely come to the Court at the time of examining defence witness and filed the petition under Section 311 of Cr.P.C on 03.08.2017, nearly one year after closure of prosecution witnesses. Thus, the trial Court, on perusal of the records, found that there is no *bona fide* in the petition to recall 22 witnesses, out of 73 witnesses examined by the prosecution, after completion of 313 Cr.P.C questioning. The petitioner herein, aggrieved by the said order, had sought for interference of the trial Court order on the ground that the petitioner, who is 76 years old, was unable to avail the opportunity of cross examination of 22 witnesses and they are the star witnesses and if they are not recalled and subjected to cross examination, it will cause grave injustice to him.

6. The reason stated by the petitioner for not cross examining the witnesses is that the counsel for the petitioner was engaged with other professional or held before the other Court, hence, he could not able cross examine those witnesses. In a case, where more than 27 accused are tried, in which 73 witnesses were examined by the

prosecution, the accused person, who have given the right of defence, should avail the opportunity to defend the case at the earliest or if he fails to avail the opportunity, he should give ample reason and seek indulgence of the Court to recall the witnesses. As a matter of right, after substantial delay, such petition can not be filed and it cannot be entertained by the court.

7. When the matter came up for admission the learned counsel for the petitioner submitted that he will recall few of the witnesses listed in his petition and he will not subject the witnesses any inconvenience, he will summon them and cross examine them on the same day. Hence, this Court gave an opportunity to the petitioner to come out with list of witnesses, whom he required to recall them to cross examine.

8. Today the learned counsel for the petitioner has submitted the list of witnesses who he suppose to cross examine. That list contained 12 witnesses. The list furnished to this court needs no other material evidence to expose the intention of the petitioner. The

witnesses given in the list by the petitioner were all examined several years back. The last witness of the prosecution was examined on 30.08.2016. The petitioner could not even give a reason why he did not file the petition to recall the witness immediately thereafter closing of prosecution side evidence, but waited for one full year. Even now when this Court thought that some indulgence should be shown to the petitioner, if really any star witness left out to be cross examined by him, he had only made few deletion in the list of 22 witnesses, brought it down to 12 witnesses, who resides in Chennai, Kerala and Cuddalore.

9. This Court is of the view that if it entertains this sort of belated petition, it will not meet the ends of justice, but will put other co-accused and the witnesses hardship. Balancing the alleged hardship claimed by the petitioner vis-a-vis the hardship of the witnesses, who have been examined long back, this Court finds that this petition has no merit to seek interference of the trial court order. Hence, this Criminal Original Petition is dismissed.

22.11.2017

ari

To

1. The Inspector of Police,CBI/EOW/Chennai.
2. The VIII Additional City Civil and Sessions Judge for CBI Cases, Chennai.
- 3.The Special Public Prosecutor for CBI Cases, High Court, Madras.



WEB COPY

Dr.G.Jayachandran,J.



Crl.O.P.No.24793 of 2017

22.11.2017

WEB COPY