

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.24825 of 2017

1. Santhanakumar

2. Shanmugam

.. Petitioners

Vs.

State Rep. By
Inspector of Police
CBI/ACB/Chennai

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 31.10.2017 made in Crl.M.P.No.2609 of 2017 in C.C.No.6 of 2006 on the file of II Additional District Court (CBI Cases), Coimbatore.

For Petitioners: Mr.B.Kumarasamy
For Respondent: Mr.K.Srinivasan (CBI Cases),
Special Public Prosecutor

ORDER

The petitioners before this Court are accused 9 and 10 seeking to set aside the order dated 31.10.2017 made in Crl.M.P.No.2609 of 2017 in C.C.No.6 of 2006 on the file of II Additional District Court (CBI Cases), Coimbatore.

2. In the above said case which was registered and taken on file in the year 2006, the trial is completed and the matter is posted for examination of defenses witnesses. At this juncture, an application has been taken down by these petitioners to recall and re-examine P.W.6, P.W.10, P.W.17, P.W.18, P.W.19, P.W.20, P.W.21, P.W.24. P.W.25, P.W.30 P.W.36 and P.W.40.

3. The reasons stated to recall the witnesses as found in the petition filed in the lower Court by the petitioners is that

the petitioners' counsel was not well on those days when the witnesses were examined in chief and therefore, he was not able to cross examine the witnesses. According to the learned counsel for the petitioners, the witnesses are material witnesses and cross examination of the same by the petitioners' counsel is very essential and if such opportunity is deprived, then the valuable right of the accused will be snatched away.

4. The learned counsel for the respondent has filed a counter affidavit before the lower Court stating that the reason stated for not cross examining the witnesses in the petition filed by the petitioners is not justifiable. These witnesses were examined between the years 2008 to 2013. While so, vague references to the un-wellness of the petitioners' counsel for all the five (05) years cannot be a ground to recall the witnesses. It is also stated in the counter affidavit that the case is of year 2006 involving multiple accused and that other accused were given an opportunity to recall the witnesses in between. But, these two accused /petitioners have awaited till the completion of prosecution evidence and questioning under 313 and thereafter have filed this petition to recall the witnesses. The intention is very clear that they want to prolong the proceedings as much as they can. The learned trial Judge after appreciating the plea of the petitioners as well as the respondents has dismissed the petition. Further referring to the Judgment of this Court report in 2015(1) MLJ 288 (SC) Vinoth Kumar vs State of Punjab and an unreported Judgment of this Court in CrI.OP(MD).No.6695/2016 dated 25.06.2016, wherein the Courts have come heavily upon entertaining the dilatory tactics of the accused person to prolong the proceedings by filing a petition to reopen, to recall and re-examine the additional witnesses.

5. The learned counsel for the petitioners submitted that the petitioners had no intention to delay the trial. Due to genuine reasons, they were not able to cross examine the witnesses. It is not correct to say that all the witnesses to be recalled by other accused in earlier point of time; except Ex.P.W.9 and P.W.10 others were not recalled by the petitioners. Therefore, for cross-examining P.W.9 and P.W.10, this Court may show indulgence to recall the witness and the petitioners are ready to cross examine them at the shortest point of time within the time frame fixed by this Court and the petitioners are also ready to pay the costs.

6. In support of the submissions, the learned counsel referred to the judgment of this Court reported in 2016-2-Law Weekly(Criminal) 484 in Silambarasan and others vs State, wherein it is stated as under:-

"6. The object of conducting the trial is to ascertain the truth and unless the witness is put to cross examination, the truth is not likely to come out. Fair trial requires that opportunity must be given to the accused to cross examine the witnesses, but, of course, by imposing stringent conditions to ensure that the time of the Court and time of the accused are not wasted any more. There is also an undertaking by the learned counsel for the petitioners that the petitioners shall cross examine all the witnesses on the same day and also pay some cost to each of the witnesses and the accused shall not seek any adjournment during future hearing dates. These undertaking are recorded."

7. In T.Mohan vs the State, reported in 2016-2-Law Weekly (Criminal) 638, this Court passed the following order, and the same is extracted as under:-

"7. Recently the Hon'ble Apex Court came down heavily upon the Courts for deferring the cross examination of prosecution witnesses. The Hon'ble Apex Court strongly advocated discouraging of such deferring of cross-examination. But in the judgment the Hon'ble Apex Court has not taken away the right of defence under Article 22(1) of Constitution of India, which has been again reiterated in Section 303 Cr.P.C. Nowhere in the said judgment the Hon'ble Apex Court says that the defence should be prejudiced. Nowhere in the Judgment it said right of defence shall be taken away. So, for a real purpose accused can be given an opportunity. But when an accused intends to prolong the case, the Court should nip it at the bud.

8. Coming to the present case, the revision petitioner has been implicated in this case and there were specific allegations against him in the final report. Charges have been framed against him. As per prosecution version certain incriminating documents and evidence has been let in with reference to Vasantha wife of the revision petitioner through P.W.15 and Ex.P.117 and P.118 have also been marked. In such circumstances, according to the accused, if this piece of incriminating evidence allowed to remain unchallenged, the accused will be greatly prejudiced. I find great substance in the submissions.

8. Apart from these two Judgments of this Court, the learned counsel has also referred to the recent judgment of the Supreme Court reported in 2017-4-MLJ-Criminal(SC) in Jagdish and another vs State of Rajasthan. This is a case where the application to recall the witnesses and cross examine them was allowed on condition to deposit costs within a period of 15 days. Unfortunately, the accused/petitioner was not able to deposit the money within the stipulated time. Hence, sought for condonation of delay for 9 days and the delay in depositing the money. In the said context, the Hon'ble Supreme Court has held as under:-

"3. We consider that this order refusing to grant extension of time even by 09 days, more so when the petitioner had given by plausible explanation in his application, is clearly erroneously and would cause miscarriage of justice, inasmuch as, the right to cross examination the prosecution witnesses is a valuable right which is given to the petitioner who is accused of the aforesaid offence. This aspect was properly appreciated while passing order dated 30.11.2016 and that is the reason that opportunity to cross examine the witnesses was granted to the petitioner. It should not have been snatched or taken back by adopting such a technical attitude even when the order was complied with and the amount was deposited but there was a delay of 09 days in depositing the same."

9. Considering the Judgment cited by the learned counsel for the petitioners as well as the averments made by the petitioners in this petition for the delay in recalling the witnesses, this Court has no doubt that the petitioners have filed only to drag the proceedings and it carries no merit. As pointed by the trial Court, the case is of the year 2006 where the witnesses were examined during the year 2008 to 2013 and the petitioners have leisurely filed this petition to recall the witness on 24.10.2017 seeking the indulgence of this Court to permit him to recall the witnesses and cross examine the witness claiming it as a valuable right of the defence.

10. The plea does carry any merit. When opportunity was given to the petitioners/accused to exercise the right of cross examination, the same was not exercised by them. Knocking the doors of justice belatedly and cry for their right is only an attempt to delay the trial. While the Hon'ble Supreme Court has strongly come out against the habit of entertaining the petitions filed belatedly to recall the witnesses, giving room for the accused person to gain over the witnesses or take advantage of the lapse of their memory due to efflux of time.

11. The Trial Court cannot give a go-by to the dictum laid by the Hon'ble Supreme Court and entertain petitions of this nature. This Court finds that there is no reason to interfere the order passed by the trial court dismissing the petition stating the valuable reasons. Accordingly, this criminal original petition is dismissed.

s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

sts/msrm

To

1. The Inspector of Police
CBI/ACB,
Chennai

2. The Public Prosecutor,
Madras High Court.

+1 CC to Mr.B. Kumarasamy, Advocate sr 81669.

Crl.O.P.No.24825 of 2017

SP(04/12/2017)

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