

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.11.2017

Coram:

The Hon'ble Dr.Justice G.JAYACHANDRAN

Crl.O.P.No.25777 of 2017

and

Crl.M.P.No.14852 of 2017

Mr.Harshavardan Reddy

... Petitioner/Accused

Versus

State represented by
Inspector of Police
CBI/BS & FC/BL
Chennai.

...Respondent/Complainant

Criminal Original Petition filed Under Section 482 Cr.P.C. to set aside the order dated 06.03.2017 passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai made in Crl.M.P.No.3211 of 2016 in C.C.No.15007 of 2008.

For Petitioner .. Mr.V.Kannadasan

For Respondent .. Mr.K.Srinivasan,
Spl.Public Prosecutor, CBI Cases

O R D E R

The petitioner herein aggrieved by the dismissal of his petition filed under Section 311 of Cr.P.C. in Crl.M.P.No.3211 of 2016 in C.C.No.15007 of 2008 to recall P.W.1 to 18, P.W.20 to 30, P.W.34 to P.W.40 and P.W.42 to P.W.53, has come before this Court under Section 482 Cr.P.C.

2.Perusal of the impugned order reveals that C.C.No.15007 of 2008 is pending on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai, nearly for a decade after commencing the examination of witness by the prosecution on 12.4.2010 and so far 53 witnesses have been examined. Thereafter, Shaalini (A3) and M.R.Sarangapani (A2) have filed petition under Section 311 Cr.P.C. to recall P.W.1, P.W.9, P.W.16, P.W.17, P.W.25, P.W.26, P.W.29, P.W.35, P.W.37, P.W.38, P.W.43, P.W.45, P.W.48, P.W.49, P.W.50, P.W.51, P.W.52 and P.W.53 about 18 witnesses out of 53 witness examined on the side of the prosecution. The said petition was dismissed by the trial

court vide its order dated 2.6.2017. Thereafter, Shaalini (A3) and M.R.Sarangapani (A2) had approached this Court with similar prayer as we find in the present petition.

3.This Court after considering the rival contentions had given an opportunity to the accused persons to examine those witnesses by recalling them. Three months time to complete that process was fixed and also cost of Rs.40,000/- was imposed to meet out the expenses for recalling the witnesses for cross-examination.

4.After expiry of three months from the date of that order, the present petitioner who is co-accused has taken out petition to recall out of 53 witnesses all the witnesses except P.W.19, P.W.31, P.W.32, P.W.33 and P.W.41. The reason stated in the petition is that his previous counsel did not cross-examine the material witnesses and therefore it is essential for him to recall the witnesses for cross-examination. The trial court after recording his reason has negated the petition.

5.From the affidavit filed in support of this petition, it appears that the prosecution has closed the evidence on their side and the matter is posted for questioning the accused under Section 313 Cr.P.C. It is also stated in the affidavit that between 26.3.2017 and 25.9.2017 the petitioner was taken into custody by the Delhi Police for some other case and therefore, he was not in a position to file petition to recall the witnesses for cross-examination. It is also seen from his affidavit that the co-accused Sarangapani (A2) his father Mrs.Shaalini (A3) his mother and Mrs.Nithya Reddy (A5)) his wife are also facing trial in this case.

6.As stated earlier, Mrs.Shaalini (A3) and Mr.Sarangapani (A2) had already approached this Court challenging the dismissal of recall petition by the trial Court and this Court has shown indulgence vide its order dated 2.6.2017 to recall witnesses on condition. Now, after the expiry of five months this petitioner has come out with similar request to recall the witnesses. The trial Court after considering the law and the judgment of the Hon'ble Supreme Court in this regard has rightly dismissed the petition to recall witness.

7.Perusal of the order passed by the trial Court clearly indicates that this petition is filed just to protract the proceedings and to harass the witnesses who have deposed against the petitioner and the reasons stated in his affidavit for not examining while they were present appears to be fake reason.

8. Therefore, this petition is dismissed. Consequently,
Crl.M.P.No.14852 of 2017 is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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Crl.O.P.No.25777 of 2017

RRK(15/12/2017)



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