



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2017

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.2704 of 2017

Kaliammal

... Petitioner

-vs-

State rep. by
The Intelligence Officer,
Narcotics Control Bureau
Madurai.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order passed in Crl.M.P.No.68/2017 dated 10.01.2017 by the Additional District and Sessions Judge/Presiding Officer Special Court for E.C. and NDPS cases at Pudukottai to recall P.W.6 in C.C.No.44/2013 pending trial.

For Petitioner : Mr.C.D.Johnson

For Respondents : Mr.C.Arul Vadivel @ Sekar
Special Public Prosecutor for NCB

O R D E R

The petitioner is the accused No.3 in C.C.No.44/2013 on the file of the Special Court, for NDPS Act Cases, Pudukottai and he is facing prosecution for offences under the NDPS Act along with other accused. The petitioner filed an application in Crl.M.P.No.68 of 2017 in C.C.No.44/2013 under Section 311 Cr.P.C. to recall Solai - Village Administrative Officer (P.W.6), which was dismissed by the trial Court on 10.01.2017, challenging which, the petitioner is before this Court with this petition.

2.Heard the learned counsel for the petitioner/A3 and the learned Special Public Prosecutor for NCB.

3. The learned counsel for the petitioner/accused submitted that the accused is in judicial custody and that he had not cross examined P.W.6 and therefore, if one opportunity is given to the accused, it will serve the interest of justice.



4. Per contra, the learned Special Public Prosecutor refuted the allegations.

5. This Court gave its anxious consideration to the rival submissions.

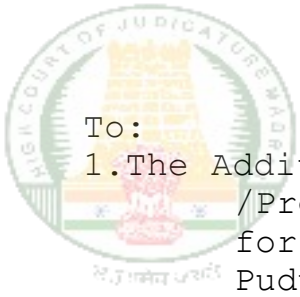
6. From the records, it is seen that Solai, Village Administrative Officer (A6) was examined in chief on 10.06.2016 and he was partly cross examined by A1 and A2 on that date itself and the case was adjourned to 17.06.2016. On that date, P.W.6 was present, but the counsel for the accused did not appear. Therefore, evidence of P.W.6 was closed. In the meantime, the High Court has directed the trial Court to complete the trial within six months by administrative proceedings dated 07.04.2016. Since the prosecution side did not produce the witnesses, the trial Judge suo motu closed the case of the prosecution and posted the case for examination of the accused under Section 313 Cr.P.C. The prosecution filed Crl.M.P.No.2005/2016 to reopen the case for examination of remaining witnesses. At that juncture, the petitioner/accused No.3 filed Crl.M.P.No.2052/2016 and accused Nos.4 and 5 filed Crl.M.P.No.2197/2016 to recall P.Ws.6 and 7 for cross examination. All the petitions were allowed by the trial Court on 09.09.2016. Summons were issued to P.W.6 once again and he appeared on 11.11.2016 and at that time, A4 and A5 cross examined P.W.6, but the petitioner/A3 did not cross examine him. Therefore, the trial Judge closed the evidence of P.W.6. Once again, A3 has filed a petition in Crl.M.P.No.68/2017 in C.C.No.44/2013 under Section 311 Cr.P.C. to recall P.W.6, which has been rightly dismissed by the trial Court.

7. In **A.G. v. Shivakumar Yadav** reported in **2015 (9) Scale 649**, the Hon'ble Supreme Court has deprecated the practice of repeatedly recalling the witness for the purpose of cross examination by the accused. In fact, in the said judgment, the Hon'ble Supreme Court has stated that just because the accused is in judicial custody, it does not mean that he can recall the witnesses at his whims and fancies. That apart this is not a case, where P.W.6 was not cross examined by any accused. P.W.6 was cross examined by A1 and A2 and subsequently, by A4 and A5 as stated above. Therefore, this Court does not find any serious infirmity in the impugned order passed by the Additional District and Sessions Judge, Pudukottai. Accordingly, the criminal original petition is closed.

Sd/-

Assistant Registrar(RTI)

/True copy/



To:

1.The Additional District and Sessions Judge
/Presiding Officer Special Court
for E.C. and NDPS cases,
Pudukottai

WEB COPY

2.The Intelligence Officer,
Narcotics Control Bureau
Madurai.

3.The Special Public Prosecutor for NCB,
Madurai Bench of Madras High Court, Madurai.

+1 cc to Mr.C.Arul Vadivel@Sekar , Advocate in SR.No. 16734

RR

AE/SV MMS/13.04.2017/3P/5C

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