



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2017

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.7709 of 2017 &
Crl.M.P.(MD).No.5265 of 2017

R.Ganesh @ Ganesh Kumar Mohamad Riyas : Petitioner/Accused

-vs-

State Rep by Inspector of Police,
Kottar Police Station,
Kanyakumari,
Kanyakumari District.
(Crime No.4 of 2007)

: Respondent/Complainant

Prayer: Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the order passed by the III Additional Sessions Judge, Tirunelveli in Cr.M.P.No.287 of 2017, dated 24.04.2017, in S.C.No.249 of 2016 and set aside the same.

For Petitioner : Mr.T.Lajapathi Roy

For Respondent : Mr.K.Anbarasan
Government Advocate (Crl.side)

O R D E R

The petitioner is facing trial in S.C.No.249 of 2016 before the learned III Additional Sessions Judge, Tirunelveli. After prosecution witnesses were examined, they were also cross-examined by the petitioner. After closure of the prosecution case, the petitioner was questioned under Section 313 Cr.P.C. and the matter was posted for defence evidence. At that time, the petitioner filed Crl.M.P.No.287 of 2017 in S.C.No.249 of 2016 under Section 311 Cr.P.C. to recall PW-1, PW-17 and PW-24, which was dismissed by the Trial Court by the impugned order dated 24.04.2017. Challenging which, the petitioner is before this Court.

2. Heard Mr.T.Lajapathi Roay, the learned counsel for the petitioner/accused and the learned Government Advocate for the respondent.



3. The learned counsel for the petitioner submitted that it is essential for the just decision of the case, if the said witnesses are recalled. He also submitted that undue prejudice will be caused to the accused if those witnesses are not recalled.

4. Per contra, the learned Government Advocate refuted the submissions.

5. This Court gave its anxious considerations to the rival submissions. It is true that a witness can be recalled at any time by the Trial Court under Section 311 Cr.P.C. before the judgment is delivered. But, however, the party must make out a case for the Court to exercise its power under Section 311 Cr.P.C. In this case, in the petition filed by the petitioner/accused in Cr.M.P.No.287 of 2017, the petitioner has not given any reason and has merely stated as follows:-

"3. It is further submitted that on pleading of the evidence, it is required that some clarifications are ought to be clarified with P.W.1 P.W.17 and P.W.24. Hence it is very much necessary for recall of above stated witnesses for further cross examination to clarify some doubts in evidence."

6. Therefore, the Trial Court was right in not entertaining the petition. That apart, the petitioner has exhaustively cross-examined the said witnesses and therefore, the present application is only to drag the Trial of such grave nature.

7. In the result, this criminal original petition is devoid of merits. Accordingly, the same is dismissed. However, the Trial Court is directed to complete the Trial in S.C.No.249 of 2016 expeditiously. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/ True Copy /

Sub Assistant Registrar(C.S.)

To:

1. The III Additional Sessions Judge,
Tirunelveli.
2. The Inspector of Police,
Kottar Police Station,
Kanyakumari,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.T.LAJAPATHI ROY, Advocate SR.No.62332

jikr

MAS/GT/SAR2:11.07.2017:2P-5C

Order made in
Crl.O.P.(MD) No.7709 of 2017
27.06.2017