



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2017

(Orders Reserved on 25.11.2016)

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.744 of 2016

R.Selvan : Petitioner / Accused

Vs.

State through
The Inspector of Police,
Vigilance and Anti Corruption,
Dindigul
(Crime No.12 of 2010)

: Respondent / Complainant

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records pertaining to impugned order, dated 20.09.2016 passed by the Chief Judicial Magistrate / Special Judge, Dindigul in Cr.M.P.No.895 of 2016 in Spl.Case No.4 of 2014, set aside the same and direct the trial Court to defer the cross examination of P.W.3 till L.W.4 and L.W.11 are examined in chief in the interest of justice and fair trial.

For Petitioners : Mr.M.Saravanan

For Respondent : Mr.P.Kandasamy
Government Advocate (crl.side)

ORDER

The Revision Petitioner herein is an accused in Spl.Case No.4 of 2014 pending on the file of the learned Chief Judicial Magistrate / Special Judge, Dindigul. While P.W.3 was produced before the Court by prosecution and was examined in chief by the prosecutor and the respondent herein, the Revision Petitioner / accused filed a petition in Cr.M.P.No.895 of 2016 on 20.09.2016, under Section 242(3) of Cr.P.C, for deferring the cross examination of P.W.3, till L.Ws.4 and 11 are examined in chief and the said petition was dismissed by the trial Court, referring the decision of the Hon'ble Apex Court in **Vinoth Kumar Vs. state of**



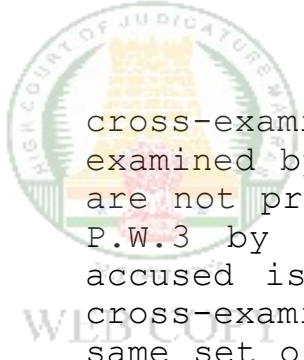
Panjab reported in **LAWS (SC)-2015-1-69.**

2. Aggrieved by the same, the accused filed the Revision Petition to call for the records pertaining to the impugned order, dated 20.09.2016, passed by the learned Chief Judicial Magistrate / Special Judge, Dindigul in Cr.M.P.No.895 of 2016 in Spl.Case No.4 of 2014 and set aside the same and direct the trial Court to defer the cross examination of P.W.3 till L.W.4 and L.W.11 are examined in chief, in the interest of justice and fair trial.

3. The learned counsel appearing for the revision petitioner contends that, when a set of witnesses are cited to speak about the same facts, the accused cannot be compelled to disclose his defence during cross-examination of one among the said witnesses, when other witnesses are not produced by the prosecution for examination on that date itself and if the prosecution had produced and examined L.Ws.2,3,4 and 11, who are cited to speak about the same set of facts for examination in one and the same day, the accused would not have chosen to file a petition under Section 242(3) of Cr.P.C., praying to defer the cross-examination of P.W.3 and the statutory right conferred on the accused under Section 242(3) of Cr.P.C., should not be denied or taken away without assigning any valid reason and the Hon'ble Supreme Court has not struck down the proviso to Section 242(3) of Cr.P.C.

4. The learned Government Advocate (crl.side) appearing for the respondent reiterating the objections found in the counter statement of the respondent would contend that the Hon'ble Supreme Court has already given direction to the Subordinate Courts to cross-examine the prosecution witnesses on the same day, if not so, the cross examination should be completed on the next day and on this pretext, an adjournment should not be given and the trial Court had fully followed the guidelines stated by the Supreme Court and has rightly dismissed the petition. Hence, it is a legally valid order.

5. It is not disputed that L.Ws.2, 3, 4 and 11 are the listed witnesses found in the charge sheet to speak about the alleged occurrence of demand of bribe and trap proceedings and L.W.1, the sanctioning authority was examined as P.W.1 and was also cross-examined. Thereafter, L.W.2 was summoned and examined in chief as P.W.2 and cross examination of that witness was deferred by the trial Court. When L.W.3 alone was present, on summon, on a particular date and was examined in Chief as P.W.3 by the prosecution, the accused person has not chosen to cross-examine the witness on the date itself, since L.Ws.4 and 11 were not produced by the prosecution for examination on the date and hence, the petitioner filed the impugned petition to defer the



cross-examination of P.W.3 till L.Ws.4 and 11 are produced and examined by the prosecution. It is not denied that L.Ws.4 and 11 are not present in the Court on the date of chief examination of P.W.3 by the prosecution. In the above stated scenario, the accused is entitled to file the impugned petition for deferring cross-examination of P.W.3, till other witnesses, who speak about same set of facts are produced by the prosecution, in the interest of justice and also fair trial.

6. As per Section 309 of Cr.P.C., the proceedings in every trial shall be continued from day-to-day, until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. It is further stated that where a witness is present in Court, but a party or his pleader is not present, who are all his pleader though present in Court is not ready to examine or cross-examine the witnesses, the court may if thinks fit, record the statement of the witnesses and pass such orders as it thinks fit dispensing with the examination or cross-examination of the witnesses, as the case may be. The proviso to Section 242(3) of Cr.P.C., permits cross-examination of any witnesses to be deferred until any of the witness or witnesses have been examined or recall any witness for further cross-examination. When a specific proviso to sub Section 3 permits to make such an application for deferring the cross-examination of P.W.3 in this case it would be proper to allow the application by deferring the cross-examination of P.W.3, till the completion of chief examination of other witnesses ie., L.Ws.4 and 11 to speak about the demand of bribe on the trap proceedings. The facts referred to in the decision in **Vinoth Kumar's case (cited supra)** are not applicable in the case on hand.

7. Considering the above facts and circumstances of the case and in the interest of justice and fair trial of the case, this Court is inclined to set aside the impugned order passed in Cr.M.P.No.895 of 2016 dated 20.09.2016, by the learned Chief Judicial Magistrate / Special Judge, Dindigul in Cr.M.P.No.895 of 2016 and also direct the learned Special Judge to defer the cross-examination of P.W.3 till the examination of L..Ws.4 and 11, if not examined or recalled those witnesses, if they are examined in chief on deposition of witnesses to be fixed by the trial Judge.

8. In the result, the Criminal Revision is ordered with above observations.

Sd/-

Assistant Registrar(RTI)

/True copy/



To

1.The Chief Judicial Magistrate /
Special Judge, Dindigul.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Dindigul

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.

+1 cc to M/s.M.Saravanan, Advocate in SR.No. 4040

MPK

CSL/SV-MMS/02.02.2017 :4P/6C

Order made in

Cr1.RC(MD)No.744 of 2016

Dated:- **24.01.2017**