

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.09.2018
Pronounced on : 28.09.2018

CORAM
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.16673 of 2011
and
M.P.No.1 of 2011

Savithri,
W/o.Balasubramanian

..Petitioner/Defacto
Complainant

Vs.

1.Balasubramanian,
S/o.Mosuvana Gounder.

2.Sumathi,
W/o.Balasubramanian.

... 1st and 2nd Respondents/
1st and 2nd accused

3.The State of Tamil Nadu
Represented by the Inspector of Police,
Kanjikoil Police Station,
Erode District.

... 3rd Respondent/
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the order made in C.C.No.416 of 2004 dated 19.04.2011 on the file of the District Munsif-cum-Judicial Magistrate Court, Perundurai, Erode District and quash the same.

For Petitioner : Ms.R.Sangeetha for
Mr.S.Selvathirumurugan

For R1 & R2 : Mr.N.Manokaran

For R3 : Ms.V.Saratha Devi,
Government Advocate [Cr1. Side]

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O R D E R

The petitioner, who is a defacto complainant has filed this Criminal Original Petition in closing the evidence of the Investigating Officer namely K.M.Natarajan, Inspector of Police, Perundurai Circle, who had investigated and filed the charge

sheet in C.C.No.416 of 2004, which is pending trial on the file of the District Munsif-cum-Judicial Magistrate Court, Perundurai, Erode District.

2.The contention of the learned counsel for the petitioner is that the trial has commenced, so far 11 witnesses have been examined in the above case and the case was posted for examination of the Investigating Officer namely K.M.Natarajan and posted the case for his appearance for six hearings. The Trial Court had given sufficient opportunity to the prosecution to examine the Investigating Officer and the Investigating Officer had not chosen to appear on 19.04.2011. Hence, the Trial Court had closed the prosecution case and posted the matter for examination of defence witnesses. Aggrieved against the same, the petitioner has filed the above Criminal Original Petition.

3.The learned counsel appearing for the petitioner submits that the Lower Court without taking any coercive steps for ensuring the appearance of the Investigating Officer had passed an order closing the evidence of the Investigating Officer is not proper. Further contended that the Additional Public Prosecutor in the Trial Court filed a petition under Section 311 of the Code of Criminal Procedure on 04.01.2011, to examine the Investigating Officer. The aforesaid petition was allowed, then to the Investigating Officer failed to appear. Thereafter, another petition under Section 311 of the Code of Criminal Procedure was filed on 07.06.2011 and the case is posted to 21.06.2011. In this backdrop, this Criminal Original Petition has been filed before this Court.

4.The contention of the petitioner is that if the Investigating Officer, who had carried out the investigation is not examined, it would cause great prejudice to the petitioner. Further, the Investigating Officer would be the right person to speak about various aspects of the investigation, which cannot be substituted and brought through any other witnesses. Hence, the examination of the Investigating Officer is indispensable.

5.The learned counsel appearing for the respondent Nos.1 and 2 submitted that the inordinate delay is caused by protracting the trial and causing great hardship to them. Further, they have no objection in examination of the Investigating Officer, if, he is examined within a certain period, without any further delay and protraction.

6.This Court is informed by the learned Government Advocate [Criminal Side] about the Investigating Officer namely K.M.Natarajan that after his retirement as Deputy Superintendent of Police, now working as an Administrative Officer in Sakthi Foundry, Pallagounden Palayam, Tiruppur District. Further, the

learned Government Advocate submits that the third respondent/Police have already informed him about the pendency of the above case and he had assured that he would appear before the Trial Court without any further delay.

7.Taking into consideration of the above, this Court feels that the examination of the Investigating Officer namely K.M.Natarajan would be helpful and beneficial to both the petitioner and the respondents as well as it would enable the Trial Court to arrive at a just decision.

8.The Trial Court is directed to fix a date for the examination of the Investigating Officer namely K.M.Natarjan, within a period of two weeks from the date of receipt of a copy of this order. The examination of the witness in chief and cross-examination to be completed on the same day. Thereafter, the Trial Court is directed to conclude the trial within a period of two months and to report compliance.

9.Accordingly, this Criminal Original Petition stands allowed and Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The District Munsif-cum-Judicial Magistrate,
Perundurai, Erode District.

2.The Inspector of Police,
Kanjikoil Police Station,
Erode District.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manoharan, Advocate, S.R.No.67684

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MP (CO)

rrs 24/10/2018