

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
Crl.O.P.No.21171 of 2018

Sunilkumar M.Tapadia ... Petitioner/Pw-5
Defacto Complaint

Vs

1 The State rep by its
The Inspector of Police
Central Crime Branch Egmore
Chennai Respondent No.1/Complaint

2 Nathmal Jain ... Respondent no.2/Sole Accused

Prayer: Criminal Original Petition filed under Section 482
Cr.P.C. to issue suitable directions for an early disposal
of the case in C.C.No.6498/2016 on the file of the Special
Court for trial of CCB, CBCID cases, Allikulam, at Chennai.

For Petitioner Mr.A.Raghunathan
Senior Counsel
for Mr.R.Sathishkumar

For R1 Mrs.M.Prabhavathi
Additional Public Prosecutor

ORDER

This petitioner has been filed to issue suitable
directions for an early disposal of the case in
C.C.No.6498/2016 on the file of the Special Court for trial
of CCB, CBCID cases, Allikulam, at Chennai.

2. The de facto complainant who decided to take
recourse to law in the year 1997 is still in the dark
tunnel without any sight of light of justice, thanks to
dubious tactics adopted by the accused to keep the
prosecution alive indefinitely. By this petition, the de
facto complainant has approached this Court for the third
time for a direction to the trial Court to complete the
trial within a time period. Earlier in Crl.O.P.No.1483 of
2015, this Court had ruled as follows in the order dated
07.07.2015:

"5.It is seen that the accused has
deliberately not cross examined all the
prosecution witnesses and after cross

examination under Section 313 Cr.P.C. he has filed an application under Section 311 Cr.P.C. for re-calling the witnesses. The Hon'ble Supreme Court has deprecated this practice in several cases and now the Hon'ble Supreme Court has held that witness who examined in chief should have to be cross examined on the same day. For the fault of the accused, in not cross examining the witness in time, the prosecution cannot suffer. The accused should suffer the consequences of his action.

6. Under such circumstances, if the Trial Court is not able to secure the presence of PW1, despite reasonable efforts, the Trial Court shall proceed with the trial and the accused cannot plead prejudice.

7. The Trial Court is directed to complete the trial within a period of four months from the date of receipt of a copy of this order. This Criminal Original Petition is closed with the above direction."

3. Since nothing happened thereafter, the de facto complainant is once again before this Court with the same prayer. The learned Magistrate has sent a report dated 07.09.2018 giving the reasons for the delay in the disposal of the case. The principal reason is that the accused have filed petitions under Section 311 Cr.P.C. one after the other. This tactics came to the notice of the Supreme Court and has led to two judgments, viz., Vinoth Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288] and A.G. vs. Shiv Kumar Yadav [(2016) 2 SCC 402]. In Shiv Kumar Yadav (supra), the Supreme Court has clearly laid down that the power under Section 311 Cr.P.C. cannot be exercised on the mere asking of the accused. In this case, the prosecution witnesses were examined a decade back and it is not known whether they are alive or whether they are in a position to come to the Court and subject themselves to cross-examination. Therefore, irrespective of the fact whether the Public Prosecutor files a counter or not, the trial Court is directed to deal with the Section 311 Cr.P.C. bearing in mind the law laid down in the aforesaid rulings. If the accused adopts dilatory tactics, the trial Court shall remand them to custody under Section 309 Cr.P.C. following the law laid down in State of Uttar Pradesh v. Shambunath Singh [JT 2001 (4) SC 319]. If any of the accused absconds, a fresh FIR can be registered under Section 229-A IPC. This Court directs the trial Court to complete the proceedings in C.C.No.6498/2016 on the file of

the Special Court for trial of CCB, CBCID cases, Allikulam, at Chennai within a period of six months from the date of receipt of a copy of this order.

Accordingly, this petition is ordered.

Sd/-/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

gms

To

1 The Special Court for Trial of CCB CBCID CASES,
Allikukalam, Chennai.

2.The Inspector of Police
Central Crime Branch Egmore
Chennai

3 The Public Prosecutor
High Court, Madras.

+1cc to Mr.R.Sathishkumar , Advocate SR.No. 73385

CrI.O.P.No.21171 of 2018

ASK(16/11/2018)



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