

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.03.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.9660 of 2018
and Crl.M.P.No.4983 of 2018

Devarajan

... Petitioner

Vs.

State represented by the
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Salem

.... Respondent

Prayer: Criminal original petition filed under Section 482 of Criminal Procedure Code, praying to call for the records relating to the order dated 07.02.2018 made in Crl.M.P.No.18 of 2018 in Spl.C.C.No.85 of 2014 on the Court of Special Judge (Special Court for Trial of Cases under Prevention of Corruption Act), Salem and to set aside the same.

For Petitioner : Mr.M.Devaraj

For Respondent : Mr.K.Prabakar

Additional Public Prosecutor

ORDER

This petition is filed under Section 482 of Cr.P.C against the order of the dismissal passed by the Trial Court rejecting the plea of the petitioner/accused to recall PW.6, PW.7 and PW.14 for the purpose of cross-examination.

2 The Trial Court after considering the submission made by the accused as well as the learned Public Prosecutor for the State has recorded as follows:-

"12 Admittedly PW6, PW7 and PW14 were examined in-chief on 17.04.2017 and 06.09.2017 respectively. Records disclose that on the date when PW6, PW7 and PW14 were examined in-chief on the side of the prosecution, no formal request was made on behalf of the petitioner by filing necessary application either to postpone the trial or to defer the cross-examination of the witnesses by invoking the provisions of either 309 or 243(3) Crl.P.C. The petitioner also did not evince any interest to file necessary application on the next hearing date to recall PW6, PW7 and PW14 by invoking the provisions

of Sec.311 CrI.P.C. The petitioner has quite leisurely after a lapse of eight months and four months respectively has come forward with the present application to recall PW6, PW7 and PW14 on the premise that PW6, PW7 and PW14 could not be cross-examined on the dates when they were examined in-chief for want of documents. The conduct of the petitioner cannot be approved more so when the reason assigned by the petitioner for non-cross-examination of PW6, PW7 and PW14 on the dates when they were examined in-chief is not a plausible one."

3 After referring the judgment of the Hon'ble Supreme Court in the case of Vinod Kumar Vs. State of Punjab [2015 (1) MLJ (CrI) 288 (SC)] and in the case of Doongar Singh and others Vs. State of Rajasthan has rightly held that witness cannot be recalled on a drop of hat at the convenience of the accused person causing harassment to the witness.

4 While the petitioner has not chosen to seek leave of the Trial Court to defer to cross-examine of the witness unless there is valuable reason to recall the witness who were examined long back. Such an application need not be entertained. Since, the reasoning of the Trial Court is fair and justifiable, in the absence of any element of illegality or improbability. This Court finds no reason to set aside the said order hence, the Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

rpl

To

1 The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Salem

2 The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Devaraj, Advocate sr.no.23429

CrI.O.P.No.9660 of 2018

nr 25/04/2018