

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2018

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.22077 of 2018 and Crl.M.P.No.12158 of 2018

Raman

... Petitioner/Petitioner/Accused

/Vs/

The State represented by
Deputy Superintendent of Police
Vigilance and Anti Corruption Wing
Krishnagiri, Krishnagiri District.
(Crime No.10/AC/2009/KG)

...Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition filed under section 482 of Code of Criminal Procedure to set aside the order passed by the learned Chief Judicial Magistrate and Special Judge, Krishnagiri in Crl.M.P.No.345 of 2018 in Spl. C.C.No.25 of 2010, dated 19.06.2018.

For Petitioner : Mr.C.R.Malarvannan

For Respondent : Mr.K. Prabhakar
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed against the order passed by the learned Chief Judicial Magistrate and Special Judge, Krishnagiri in Crl.M.P.No.345 of 2018 in Special C.C.No.25 of 2010 dated 19.06.2018 dismissing the petition to recall PW2 to PW5 and PW8 to PW13 for cross examination.

2. The learned counsel for the petitioner would submit that the trial cannot be completed without any opportunity being given to the petitioner/accused to recall the witnesses and cross examine them and would submit that if the petitioner is not permitted to recall the witnesses and cross examine them, grave prejudice will be caused to him. He would submit that if the order of dismissal is set aside and if the witnesses are permitted to be recalled, the petitioner would cross examine

them on the same day of their appearance.

3. Per contra, the Additional Public Prosecutor would submit that the case had been registered during 2010 and the Calendar Case is also of the year 2010 and that the witnesses have been examined during the year 2014, 2016 and 2017. He would further submit that the petitioner/accused had wilfully and purposely failed to cross examine the witnesses only to protract the trial. He would further submit that the petition in CrI.M.P.No.375 of 2016 seeking to recall PW1 to PW3 had been filed on 19.09.2016 after 6 years of examining them in chief and it had been dismissed on 24.11.2016. The dismissal of the petition was not challenged. Thereafter, another application in CrI.M.P.No.325 of 2016 had been filed for recalling PW2 to PW13 and had been dismissed on 21.06.2017 and that was also not challenged. The trial Judge holding that the dismissal of earlier applications had not been challenged and that the case being pending from 2010 had dismissed the present petition in CrI.M.P.No.345 of 2018 for recalling the witnesses. He would further submit that though two earlier applications have been filed for the similar relief and they had been dismissed by the trial Judge, the petitioner had not taken any steps to challenge the order or had not been vigilant enough to proceed with the trial. He would further submit that it is not a case where the petitioner has approached this court immediately after the 1st dismissal of petition to recall the witnesses. He would further submit that the petitioner has not come to this court with clean hands and the present petition has been filed only with the object of delaying the trial and the petition is devoid of merits and deserves to be dismissed.

4. Heard both sides.

5. I have gone through the records. It is seen from the lower court order that earlier a petition to recall the witnesses has been filed by the petitioner on 19.06.2016 and that had been dismissed on 24.11.2016. The petitioner/accused has not challenged that order of dismissal. Thereafter, another application had been filed to recall the witness on 12.06.2017 and that had been dismissed on 21.06.2017 and that order had also not been challenged. The order now under challenge is the dismissal of the third application filed to recall the witness in CrI.M.P.No.345 of 2018 in Spl. C.C.No.25 of 2010 which has been dismissed on 19.06.2018. Though earlier two applications have been filed to recall witnesses and dismissed during the year 2016 and 2017, the petitioner had not challenged the orders of dismissal of petition for recalling the witnesses. The trial Judge while dismissing the applications for recalling the witnesses had held that the petitioner/accused filed the petition to recall PW1 to PW5 and PW8 to PW13 stating that due to non availability of certain documents they were unable to cross examine and had filed the petitions seeking to recall the witnesses for cross examination. The respondent had filed a

counter stating that PW2 had been examined on 21.01.2014 and 10.05.2016, PW3 had been examined on 17.11.2015 and on 19.07.2016, PW4 and PW5 have been examined on 28.12.2016, PW6 and PW7 have been examined on 03.01.2017, PW8, PW9 and PW10 have been examined on 10.01.2017, PW11 had been examined on 07.03.2017, PW12 had been examined on 13.03.2017, PW13 had been examined on 25.04.2017 and PW14 had been examined on 09.05.2017 and the petitioner had not cross examined them. The learned trial Judge had dismissed the petition stating that two earlier applications to recall the witnesses have been dismissed. The first application has been dismissed on 19.09.2017 and subsequent application with the same relief had been dismissed on 21.06.2017. It has been rightly pointed out by the learned trial Judge that the petitioner had not taken any steps to challenge the earlier orders of dismissal. Whereas, the third application has been filed with the same relief and the trial Judge after taking into consideration the directions issued by the Apex Court as well as the High Court and also taking into consideration that the case has been pending from 2010 had dismissed the application. This Court finds no infirmity in the order passed by the trial Judge. This Court is of the opinion that the present application is nothing but a dilatory tactics adopted by the petitioner/accused to delay the further progress of the trial. It is relevant to refer to the decision of the Hon'ble Apex Court reported in 2015 - 3 SCC 220 (Vinod Kumar v. State of Punjab), wherein it has been held that calling witnesses for cross examination after a long span of time is anathema to the concept of proper and fair trial. The petitioner is not entitled to the relief.

6. Accordingly, the Criminal Original Petition is dismissed. The trial Judge/The learned Chief Judicial Magistrate and Special Judge, Krishnagiri is directed to get along with the trial in Spl.C.C.No.25 of 2010 taking into consideration the directions issued by the Apex Court in Vinod Kumar v. State of Punjab. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

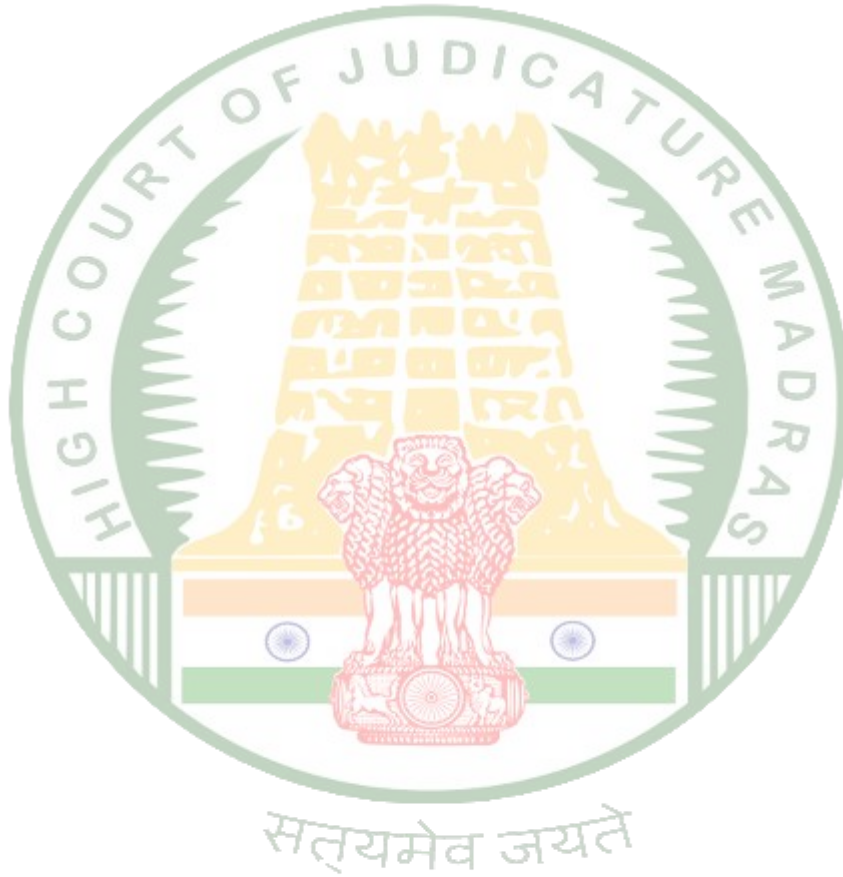
1. The Chief Judicial Magistrate and Special Judge, Krishnagiri.
2. The Public Prosecutor,
High Court, Chennai-104.

3. The Deputy Superintendent of Police
Vigilance and Anti Corruption Wing,
Krishnagiri, Krishnagiri District.

+lcc to Mr.N.Mohideen Basha, Advocate sr.no.64271

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nr 16/10/2018



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