

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.2499 of 2018

1. S.Muthukrishnan

... Petitioner/Petitioner/
Accused

Vs.

State by
Deputy Superintendent of Police,
Vigilance & Anti Corruption Department,
Tiruppur.

... Respondent/Respondent/
Complainant

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 04.01.2018 and made in C.M.P.850/2017 in Spl.C.C.No.2/2015 on the file of Chief Judicial Magistrate, Tiruppur.

For Petitioner : Mr.T.Munirathnam Naidu

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

O R D E R

This Criminal original petition is directed against the order of the trial Court dismissing 311 petition to re-call P.W.2.

2. The brief facts of the case is that

during the trial against the petitioner for alleged offence under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, the defacto complainant was examined as P.W.2 by the prosecution on 23.02.2017. On that day, a petition under 242(3) Cr.P.C., was filed to defer the cross-examination of P.W.2, till the accompanying witnesses L.W.3 and L.W.4 are examined. The said petition was allowed by the trial Court.

3. However, when L.W.3 viz., Jothinath was examined as P.W.3 on 12.09.2017, though P.W.2 was also present and ready to be cross examined, he was not cross examined without assigning any reason but just mentioning, "due to unavoidable circumstances the counsel was not able to cross examine." A petition under Section 311 Cr.P.C., has been filed after two months to re-call P.W.2 and P.W.3. The trial Court recording the reasons that after seven months from the date of examination of P.W.2, P.W.3, Jothinath was cross examined on 12.09.2017 and on that day, though P.W.2 was also present, the witnesses were not cross examined by the accused and no specific reason for not cross examining the witnesses is stated in the petition, therefore, in view of Section 309 Cr.P.C., and following the judgment of the Apex Court rendered in Vinothkumar Vs. State of Punjab, reported in 2015 - 2 SCC (Cri) page 226 and Kumar and Doongar Singh and others Vs. State of Rajasthan 2017(2) TLNJ 619 (Criminal) had dismissed the petition.

4. The learned counsel for the petitioner would submit that the right of cross examination of crucial witnesses viz., the defacto complainant and decoy witness cannot be deprived on technical ground, more so, when the petition to defer the cross examination of witnesses was allowed by the trial Court and evidence of L.W.3 alone was completed on 12.09.2017, the presence of P.W.2 in the Court would not dis entitle the petitioner from filing the petition to recall and subject him to cross examination.

5. The learned Additional Public Prosecutor would submit that on a specific undertaking given in the petition filed under Section 242(3) of Cr.P.C., the cross examination of P.W.2 was deferred. However, when the witness was present to be cross examined, the petitioner has not availed that opportunity. Therefore, he has no locus standi to make a plea that opportunity to cross examination has been denied to him.

6. Heard the learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondent.

7. Perused the records. The reading of the petition filed under 242(3) Cr.P.C., to defer the cross-examination of witness and Section 311 petition filed to recall witness clearly indicates though there was opportunity to cross examine P.W.2 and P.W.3, the accused/petitioner have not availed the opportunity when the witnesses were present. Further, in the recall petition, no reason is stated why he did not cross examine the witnesses on the day when the witnesses were present. Hence, I do not find any illegality in the finding of the trial Court.

8. However, in view of undertaking given by the learned counsel for the petitioner, that he will cross examine the P.W.2 and P.W.3 without fail on the day fixed by this Court and ready to pay cost, this Court is of the opinion that pointing out the cavalier manner in which recall petition is filed without assigning any reason this petition can be allowed on following terms:-

i) The petitioner shall pay cost of Rs.5,000/- (Rupees five thousand only) to the Coimbatore District Legal Service Authority on or before 05.02.2018.

ii) On such payment he shall file a fresh petition under Section 311 Cr.P.C., before the trial Court and deposit special batta of Rs.2,000/- (Rupees two thousand only) each to P.W.2 and P.W.3.

iii) On such petition and payment the witness may be summoned to appear before the Court on any day before 29.02.2018 and on that day, the petitioner shall cross examine the recalled witnesses without fail. If the petitioner fails to avail the said opportunity, no further petition shall be entertained.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

AT
To

1. The Chief Judicial Magistrate,
Tiruppur.
2. The Deputy Superintendent of Police,
Vigilance & Anti Corruption Department,
Tiruppur.
3. The District Legal Service Authority,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Munirathnam Naidu, Advocate, S.R.No.6818

Cr1.O.P.No.2499 of 2018

vgii(co)
cs/31/01/18