

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.06.2018

CORAM

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.O.P.Nos.15421 to 15425 of 2018

Ganapathi

...Petitioner in all Crl. O.Ps.

Vs

State represented by
The Inspector of Police,
C.C.I.W., C.I.D.,
Cuddalore District

..Respondent in all Crl. O.Ps.

Common Prayer: Petition filed under Section 482 of Criminal Procedure Code to set aside the orders dated 20/09/2017 passed in C.M.P.No.3782/2017 in C.C.No. 180/2011, C.M.P.No.3781/2017 in C.C.No.181/2011, C.M.P. No.3780/ 2017 in C.C.No.182/2011, C.M.P.No.3918/2017 in C.C.No.183/2011 and C.M.P.No.3379/2017 in C.C.No.184/2011, on the file of the learned Judicial Magistrate No.1, Cuddalore.

For Petitioner : Mr.K.V.Sridharan

For Respondent : Mr.C.Raghavan
Government Advocate

C O M M O N O R D E R

These Criminal Original Petitions are filed to set aside the orders passed in C.M.P.No.3782/2017 in C.C.No. 180/2011, C.M.P.No.3781/2017 in C.C.No.181/2011, C.M.P. No.3780/ 2017 in C.C.No.182/2011, C.M.P.No.3918/2017 in C.C.No.183/2011 and C.M.P.No.3379/2017 in C.C.No.184/2011, on the file of the learned Judicial Magistrate No.1, Cuddalore against the petitioner.

2. The petitioner is facing trial in C.C.Nos. 180 to 184 of 2011 for the offences under Sections 408, 468 and 477A I.P.C. The prosecution examined four witnesses and they were not cross examined by the accused, for the reasons best known to them. Thereafter, the accused filed petitions under Section 311 Cr.P.C., praying to recall the prosecution witnesses PW-1 to PW-4, which were dismissed by the Trial Court on 20.09.2017, against which these Petitions are filed, only in the year 2018.

3. Mr.K.V. Sridharan, learned Senior Counsel appearing for the accused submitted that a fair opportunity should be given to the accused to defend his case otherwise undue hardship would be caused to him.

4. Per contra, the learned Government Advocate refuted the said contention of the counsel.

5. This Court gives its anxious consideration to the rival submissions. The Supreme Court in the case of Vinod Kumar vs State of Punjab, reported in 2015 (1) MLJ (Cr1) 288 SC, has issued a direction to all the Trial Courts in the State to ensure that witnesses should be cross examined on the day of examination in chief. Following the direction issued by the Supreme Court, the Registrar General of High Court has issued a circular to all the Courts to strictly follow the law laid down by the Supreme Court in Vinod Kumar's case. In the case of Rajaram Prasad Yadav vs State of Bihar, reported in (2013) 3 SCALE 316, the Supreme Court has stated that petitions filed under Section 311 of Cr.P.C, should not be mechanically ordered because undue prejudice would be caused to the witnesses, who will be required to come to the court and give evidence, and for the accused to cross examine him at the relevant point of time. In fact the Supreme Court in the case of A.G. vs. Shivkumar Yadav, reported in (2015) 9 SCALE 649, has held that just because the accused is in custody that cannot be a good reason to allow the petition under Section 311 Cr.P.C.

6. In this case, PW-1 was examined in chief on 06.04.2010; PW-2 was examined in chief on 06.02.2013; PW-3 was examined in chief on 06.02.2013; and P.W.4 was examined in chief on 29.06.2016 and 26.04.2017. The petitioner did not chose to file any application under Section 311 CrPC from 2010 to 2016. Even in the application filed in the instant case, the petitioner has not given any sound reasons for re-calling the witnesses. Mr.V.Sridharan, learned senior counsel for the petitioner submitted that the accused were not in possession of certain documents and that is the reason he did not cross examine the witnesses. The accused has not stated what are the documents required in this case.

7. It is seen that there are two accused in these cases and the petitions under Section 311 Cr.P.C. have been filed only by Ganapathy, A-2, who is the petitioner in these cases. It is possible that the first accused will file similar applications and adopt dilatory tactics. The Trial Court should be cautious about such tactics and should not permit that.

8. Be that as it may, this Court is of the view that interest of justice will be served if PW-4 examined in chief on 26.04.2017 is re-called for the purpose of cross examination. The trial court is directed to re-call PW-4 and the petitioner shall pay a sum of Rs.2000/- as cost to PW-4. The District Public Prosecutor and the trial court shall furnish the

deposition of PW-4 for him to refresh his memory and only thereafter he can be cross examined by the accused. If on the day of appearance of the witness, the accused does not cross-examine, even on account of boycott of Court, the accused will forfeit his right to cross examine PW-4.

9. With the above directions, these petitions are ordered accordingly.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

avr/ mm

To

1. The Inspector of Police,
C.C.I.W., C.I.D.,
Cuddalore District.
 2. The Judicial Magistrate No.1,
Cuddalore.
 3. The Public Prosecutor,
High Court, Madras.
- + 1 cc to Mr.K.V. Sridharan, Advocate Sr.37857

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(CS-VII)
EU(26/06/2018)

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