

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2018

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.O.P.No.16271 of 2018
and
CrI.MP.No.8373 of 2018

Azim Fousan Pulparambil

... Petitioner

Vs.

State rep. by
The Inspector of Police
Sulur Police Station
Coimbatore District.

... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records and to set aside the impugned order dated 14.02.2018 passed in C.M.P.No.209 of 2018 in C.C.No.719 of 2017, on the file of the learned Judicial Magistrate, Sulur, Coimbatore District.

For Petitioner : Mr.I.Abdul Basith

For Respondent : Mr.C.Raghavan
Government Advocate (CrI. Side)

O R D E R

This criminal original petition has been filed to call for the records and to set aside the impugned order dated 14.02.2018 passed in C.M.P.No.209 of 2018 in C.C.No.719 of 2017, on the file of the Judicial Magistrate Court, Sulur, Coimbatore District.

2. The petitioner is facing a prosecution in C.C.No.719 of 2017 for the offences under Sections 279, 337 and 304-A IPC before the Judicial Magistrate Court, Sulur, Coimbatore District. The prosecution examined PW1 on 22.11.2017 and on the same day, PW1 was exhaustively cross-examined by the accused. Thereafter, the prosecution examined PW4 and PW5 and they were also exhaustively cross-examined by the accused on 17.01.2018. While so, the accused filed C.M.P.No.209 of 2018 in C.C.No.719 of 2017 under Section 311 Cr.P.C. to re-call PW1, PW4 and PW5, which has been dismissed by the trial Court on 14.02.2018,

challenging which, the accused is before this Court.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondent-State.

4. The learned counsel for the accused placed strong reliance on the judgment of the Supreme Court in *Rajaram Prasad Yadav Vs. State of Bihar* [(2013) 3 Scale 316], wherein, the Supreme Court has held in Paragraph No.23 (j) & (k) as follows:

"j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results."

5. Per contra, the learned Government Advocate (Crl. Side) refuted the contention.

6. It is true that the trial Court has the power to re-call the witnesses. However, it should be essential for the just decision of a case. But, in this case, in the petition filed by the accused before the trial Court, the accused has merely stated as under:

"In the meanwhile the petitioner misplaced some material documents, so he cannot raise the important questions at the time of cross examination of PW1, PW4 and PW5 witnesses."

Beyond this, there is no other reason to re-call the witnesses. For maintaining a petition under Section 311 Cr.P.C., it is the duty of the petitioner to disclose the reasons for recalling the witnesses. When this Court questioned the learned counsel as to what are the documents with which they want to confront PW1, PW4 and PW5, the learned counsel submitted that they want to confront the witnesses with the entries in the Accident Register. Admittedly, it is a case under Section 304-A IPC, where, the victim has died. The entries in the Accident Register have to be proved by the doctor. That apart, the

entries in the Accident Register assume less significance in the light of the judgment of the Supreme Court in B.Babu Vs. State [1994 SCC (Cr1) 424]. It is true that in Rajaram Prasad Yadav (supra), the Supreme Court has held that exigency of the situation, fair play and good sense should be the safe guard, while exercising powers under Section 311 Cr.P.C. However, in A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], the Supreme Court has considered Rajaram Prasad Yadav (supra) and has given detailed guidelines, wherein, it has been held that on the mere asking of a party, the power under Section 311 Cr.P.C. cannot be invoked, even if the accused is in judicial custody. That being the case, neither before the trial Court nor before this Court, the petitioner has been able to give satisfactory explanation as to why the witnesses have to be re-called.

7. In such view of the matter, this Court does not find any infirmity in the order passed by the Court below. Hence, this petition is dismissed, as being devoid of merits. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mk

To

1.The Judicial Magistrate, Sulur,
Coimbatore District.

2.The Inspector of Police
Sulur Police Station
Coimbatore District.

3.The Public Prosecutor
High Court, Madras.

+1cc to Mr.I.Abdul Basith, Advocate, S.R.No.39986

Cr1.O.P.No.16271 of 2018

CS/06/07/18