

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.16653 of 2018

and

Crl.M.P.No.8596 of 2018

R.Murugavel
... Petitioner

Vs

State rep by its
Station House Officer
Muthandikuppam Police Station
Neyveli.
... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 04.05.2018 passed in Crl.M.P.No.461 of 2018 in C.C.No.78 of 2012 on the file of the Judicial Magistrate No.I at Pantruti.

For Petitioner : Mr.P.Veeraraghavan

For Respondent :

Ms.P.Kritika Kamal,

Government Advocate (Crl Side)

O R D E R

This Criminal Original Petition has been filed seeking a direction to set aside the order dated 04.05.2018 passed in Crl.M.P.No.461 of 2018 in C.C.No.78 of 2012 on the file of the Judicial Magistrate No.I at Pantruti.

2. Heard the learned counsel for the petitioner, the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials placed on record.

3. The petitioner is facing prosecution in C.C.No.78 of 2012 before the Judicial Magistrate No.I, Pantruti for the offences under Sections 279, 337 and 304(A) I.P.C. The trial commenced on 16.03.2017 and the prosecution examined Karthikeyan (PW1), Sakthivel (PW2), Rajasekaran (PW3) and Singaram (PW4). None of the witnesses were cross examined by the accused. Maya Krishnan (PW5) and Jayaram (PW6) were examined on 10.04.2017. One Srinivasan, S/o.Arumugam, who was shown as LW2 in the final report was examined as PW7 on 08.02.2018. The accused filed an application in Crl.M.P.No.461 of 2018 in C.C.No.78 of 2012 under Section 311 Cr.P.C to recall PW1 to PW5, which has been dismissed by the trial Court on 04.05.2018. Aggrieved by which, the accused is before this Court.

Police Station is present before this Court. Learned counsel for the petitioner submitted that the petitioner may be given one more opportunity to cross examine the witnesses, otherwise, undue prejudice will be caused to the accused.

5. Per contra the learned Government Advocate [Criminal Side] refuted the contentions.

6. This Court gave its anxious consideration to the rival submissions. In Vinodh Kumar Vs State of Punjab reported in 2015[1] MLJ [Cr1] 288, the Supreme Court has very clearly stated that the prosecution witness should be examined on the day they are examined in chief. It has now become a practice in the trial Court, not to cross examine the witnesses on the day when they are examined in chief and thus, protract the trial indefinitely and after the witnesses are won over, a petition under Section 311 Cr.P.C is filed to recall them and turn them hostile.

7. This case is of the year 2012 and three witness were examined on 16.03.2017. The accused could have filed an application under Section 311 Cr.P.C immediately, but whereas, the petition has been filed only on 16.02.2018. In the petition, the accused has stated that the Court had not given sufficient opportunity to cross examine the witness. This allegation against the trial Court cannot be countenanced because, on a reading of the deposition, after the chief examination has been recorded, against the column cross examination, the trial Court has recorded "despite opportunity, no cross by the accused".

8. Further, in the petition, the accused has stated that PW2 was examined in chief on 08.02.2018. But, whereas, it is seen that PW2 was examined in chief on 16.03.2017. Thus, this Court finds that the accused had not given sufficient reasons in the petition filed by him before the trial Court to recall the witness under Section 311 Cr.P.C. The petition under Section 311 Cr.P.C has been prepared in a cavalier manner with wrong information. That is one of the reasons for the trial Court to dismiss the application.

9. In A.G. Vs Shiv Kumar Yadav reported in 2015[9] Scale 649, the Supreme Court has given guidelines for exercise of the powers under Section 311 Cr.P.C. Following the law laid down in the said judgment, the accused may not be entitled to recall PW1 to PW5 for the purpose of cross examination, as a matter of right. Hence, this Court does not find any infirmity in the order passed by the trial Court dismissing the petition.

10. The learned Counsel for the accused submitted that the accused may be permitted to at least cross examine one Srinivasan, S/o.Arumugam, who was examined as PW7.

11. Though the accused had not included PW7 in CrI.M.P.No.461 of 2018, instead of giving liberty to the accused to file a fresh application under Section 311 Cr.P.C., this Court is of the view that interest of justice will be served, if a direction is given to the trial Court to recall Srinivasan (PW7) for the purpose of cross examination, provided he is alive and has not gone out of the country, on the following terms :

i. The trial Court shall fix a date on which Srinivasan, S/o.Arumugam (PW7) shall be recalled;

ii. On the appearance of Srinivasan, the Assistant Public Prosecutor in charge of the case and the trial Court shall give him a copy of his deposition for him to read the same and refresh his memory and only thereafter, he can be subjected to cross examination by the accused. The accused shall pay a cost of Rs.1,000/- to Srinivasan.

iii. If on the date of appearance of Srinivasan, if the accused fails to cross examine him, even on account of boycott of Courts, the accused will forfeit his right to recall Srinivasan (PW7).

With the above direction, this petition is closed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

gmd/gya

To

1.The Judicial Magistrate No.I,
Pantruti.

2.Station House Officer,
Muthandikuppam Police Station,
Neyveli.

3.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr. P. Veeraraghavan, Advocate Sr.

CrI.O.P.No.16653 of 2018

KS(CO)
EU(12/07/2018)