

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.11.2018
CORAM
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CrI.O.P.No.12633 of 2017
and
CrI.M.P.No.8259 of 2017
&
CrI.M.P.No.14460 of 2017

S.Srinivasan

..Petitioner

Vs

G.M.Radhakrishnan

..Respondent

Prayer:

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed by the track court, George of Tamilndstrate in CrI.M.P.Nos.4452 and 4461 of 2017 in C.C.No.1780 of 2015 and consequently permit the petitioner to carry out further cross examination of P.W.1.

For Petitioner : M/s.V.Ramamurthy

For Respondent : Mr.S.Sundar

ORDER

This petition has been filed challenging the order dated 27.06.2017 passed by the Court below, dismissing the application filed under section 311 of Crpc to recall and for further cross examination of P.W.1.

2. It is seen from the records that the case is of the year 2007. This case has been pending for the last 11 years. It will be relevant to extract the portion of the order passed by the Court below, wherein the Court below has dealt with the various stages at which the case was adjourned for affording an opportunity to the petitioner to cross examine P.W.1. The relevant portion is extracted hereunder:

Admittedly, the present case was pending for the Defence side arguments. The present case was originally numbered as C.C.No.398 of 2007 and then it was transferred to this court and pending as C.C.No.1780/2015. On the perusal of the records the proof of the P.W.1 was filed as early as on

17.12.2008 and the accused was questioned under Section.313 Cr.p.c on 18.03.2009. Then on allowing the Section 311 Cr.p.c petitions the P.W.1 was elaborately cross examined on 10.11.2011, 31.07.2013. Then when the case was pending for arguments on 30.03.2016 the accused had filed a petition to reopen the case for Dws and his petition under Section 315 was allowed by this court then the case was adjourned on 31.03.2016, 04.04.2016, 18.04.2016. On that date the D.W.1 had let in his chief evidence and when the case was adjourned for the D.W.1 cross again he had not appeared and warrant was issued, then he had recalled the same and then under the guise of Transfer proceedings he had got many adjournments and at last the D.W.1 was cross examined on 24.03.2017. Then this court had granted opportunities for letting in further D.Ws on 06.04.2017 and on 17.04.2017 as no further evidence was let in D.Ws was closed by this court and the complainant side arguments was heard on 26.04.2017 and the case was adjourned for the defence arguments on 05.05.2017, 23.05.2017, 06.06.2017. On that date the present petition was filed.

3. It is seen from the above extract of the order that P.W.1 has also been cross examined by the petitioner elaborately. It is seen from the records that the proof affidavit of P.W.1 was filed on 17.12.2008 and the petitioner has filed a petition to recall P.W.1 after nearly 9 years. It is true that the petitioner has to be afforded reasonable opportunity in order to cross examine the witnesses. However, that should not become an endless process, wherein the petitioner has successfully dragged on the proceedings for the past 11 years. The case was at the stage of the defence side arguments even as early as in the year 2010. Thereafter, the case has again been reopened in order to recall and for further cross examination of P.W.1.

4.The learned counsel for the petitioner placed reliance upon the judgment of the Hon'ble Supreme Court in Crl.Appeal No.of 2013 @ SLP (CRL) No.2400 of 2011 [Rajaram Prasad Yadav Vs State of Bihar & Another]. The Judgment that has been relied on the learned counsel for the petitioner will not have any application to the facts on hand.

5. The Court below has considered the application filed by the petitioner in detail and has come to the conclusion that there are absolutely no bona-fide on the side of the petitioner to recall and for further examination of P.W.1.

6. This Court does not find any illegality or irregularity or infirmity in the order passed by the Court below. There are absolutely no grounds made out before this Court to interfere with the impugned order passed by the Court below. Hence, this Criminal Original Petition is dismissed. Consequently, connected Criminal miscellaneous petitions are closed.

7. The Court below is directed to complete the proceedings within a period of two months from the date of receipt of copy of this order and report compliance before this Court after completion of the proceedings. It is made clear that the dismissal of this petition will not have any bearing on the merits of the case. It is always open to the petitioner to raise all the issues before the Court below and the Court below shall consider the same on its merits and in accordance with law.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

The Metropolitan Magistrate,
Fast Track Court No, IV,
George Town, Chennai.

+lcc to Mr.V.Ramamurthy Advocate, S.R.No.77180

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VD(CO)

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