

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.10.2018

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.22978 of 2018

Sugumar

... Petitioner

/Vs/

State represented by
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Erode District.
Cr.No.3/AC/2008/ER

... Respondent

PRAYER: Criminal Original Petition filed under section 482 of Cr.P.C., seeking to set aside the order passed in Crl.M.P.No.2088 of 2018 in Spl. C.C.No.10 of 2015, dated 01.08.2018 on the file of the learned Chief Judicial Magistrate, Erode and recall the P.W.2 to P.W.5.

For Petitioner : Mr.C.Ramkumar

For Respondent : Mr.K.Prabhakar
Additional Public Prosecutor

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O R D E R

This petition has been filed to set aside the order passed in Crl.M.P.No.2088 of 2018 in Spl. C.C.No.10 of 2015, dated 01.08.2018 by the learned Chief Judicial Magistrate, Erode dismissing the petition to recall P.W.2 to P.W.5.

2. The learned counsel for the petitioner would submit that the petitioner is being prosecuted for offences under Section 7 and under Section 13(2), 13(i)(d) of Prevention of Corruption Act. He would further submit that even before the de-facto complainant was examined as witness, the accompanying official witness was examined in chief on 21.04.2017 as P.W.2 and thereafter, on 29.08.2017, P.W.3 (L.W.6) John Christopher was examined by the prosecution and on 09.03.2018, P.W.4 (L.W.2) Sengottaiyan (the complainant) was examined by the prosecution. On 05.06.2018, P.W.5 (L.W.3) Vivekanandhan was examined by the prosecution. He would also submit that before the examination of the complainant who is the star witness, the prosecution has examined P.W.2 Loganathan, who is official

witnesses and thereby, the petitioner was handicapped and was unable to cross examine the above mentioned witnesses. He would also submit that the prosecution has examined by P.W.2 only on 09.04.2018. Since the complainant was examine belatedly he was unable to cross examine the other witnesses on the day of their examination in chief. He would also submit that the cross examination of above witnesses are very much essential for defending this case. The learned counsel for the petitioner would submit that while dismissing the application for recalling the witnesses the learned trial Judge had observed that when P.W.2 to P.W.5 were examined in chief, no formal request was made on behalf of the petitioner/accused either orally or by preferring an application under Section 242(3) of the Cr.P.C., and to defer the cross examination to a future date and that the petition had also been filed belatedly only on 10.07.2018.

3. The learned Additional Public Prosecutor would submit that the petitioner/accused had, wilfully in order to protract the proceedings, failed to cross examine the witnesses on the days of examination in chief. He would further submit that the trial Court had, rightly relying on the mandates of the judgement of the Hon'ble Supreme Court, dismissed the application. He would also submit that the petitioner/accused has not shown sufficient cause for not examining the witnesses on their day of examination in chief and no formal request or application to defer the cross examination had been filed by the petitioner/accused and thereby, the trial Court had rightly dismissed the petition for recalling the witnesses.

4. I have gone through the order of the Trial Court. The trial judge, taking into consideration, decision rendered by the Hon'ble Apex Court regarding recall of witnesses and jurisdiction in the process of trial, has rightly dismissed the application for recalling the witnesses. Though the trial Court has wide discretionary power to recall the witnesses already examined, for the purpose of cross examination, such discretion can be exercised in favour of the accused only if the accused assigns sufficient cause for not examining the witnesses on the day when they were examined in chief by the prosecution and thereby I see no error in the order passed by the learned trial judge. However, this Court is able to visualize facts that the witnesses sought to be recalled are crucial witnesses and if the petitioner/accused is not allowed to recall them and cross examine them, it will adversely affect the case of the defence and it would literally be a case of no defence and the trial Court could come to the conclusion only based on the evidence let in chief and ultimately it will only lead to multiplicity of proceedings and a second round of litigation at later point of time. Though, this Court does not appreciate the conduct of the petitioner in not examining the witnesses on their day of appearance, in the interest of fair trial, this Court feels that one ultimate opportunity can be given to the

petitioner/accused to recall the witnesses examined in chief on imposition of cost and fixing terms.

5. This Court enquired the learned Additional Public Prosecutor about the stage of the case and the availability of the witnesses already examined in chief. The learned Additional Public Prosecutor would, on instructions from the respondent, submit that two of the witnesses examined in chief are official witnesses and PW.2 to PW.5 are private individuals. He would also submit that the trial is progressing and that 13 other list of witnesses are yet to be examined and the case has been posted to 12.10.2018 for further evidence.

6. At this juncture, the counsel for the petitioner would submit that any stringent condition may be imposed by fixing terms and cost and that the petitioner/accused would positively cross-examine the witnesses on their day of appearance. The learned Additional Public Prosecutor would also submit that the witnesses are available and the respondent would be able to produce them before the Court on any day fixed by the trial Court.

7. Taking into consideration, the submissions made by the learned counsel and also taking into consideration the facts and circumstances of this case, the trial Judge is directed to recall PW.2 to PW.5 on a particular day to be fixed by them, and on the witnesses appearing before the trial Court the petitioner/accused shall cross-examine them on the same day of their appearance without taking any further adjournment. This Court also imposes a cost of Rs.10,000/- on the petitioner, out of which Rs.1,000/- each should be paid to the witnesses on the date of their appearance before the trial Court and the balance amount of Rs.6,000/- should be paid to the concerned District Legal Services Authority and the receipt shall be produced before the trial Court before cross-examination of the witnesses.

8. With the above observations, the Criminal Original Petition is disposed of.

ssi/kv

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Erode.

2. The Deputy Superintendent of Police,
Vigilance and Anti Corruption, Erode District.

3. The Public Prosecutor,
High Court, Madras.

COPY TO:- The Secretary, Legal Service Authority,
District Court, Erode.

+1cc to Mr.C.Ramkumar, Advocate, S.R.No.70270

KR/25/10/18

Cr1.O.P.No.22978 of 2018



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