

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.23292 of 2018

V.Muthuvel

... Petitioner

/Vs/

State represented by
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Erode District.
Cr.No.19/AC/2003/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.1658 of 2018 in Spl. C.C.No.29 of 2015, dated 09.07.2018 on the file of the learned Chief Judicial Magistrate, Erode and allowing the petition.

For Petitioner : Mr.A.Nowfal

For Respondent : Mr.K.Prabhakar
Additional Public Prosecutor

O R D E R

This petition has been filed to set aside the order passed in Crl.M.P.No.1658 of 2018 in Spl.C.C.No.29 of 2015, dated 09.07.2018 on the file of the learned Chief Judicial Magistrate, Erode, dismissing the petition to recall the witnesses.

2. The learned counsel for the petitioner would submit that though the P.W.1 was examined on 18.07.2006, the other witnesses have been examined only from 13.02.2014. He would submit that the petitioner is a senior citizen and due to wrong legal advice he had not cross examined the witnesses on the same day of their examining in chief. He would submit that he had filed a petition to recall P.W.2 to P.W.7 and P.W.9, P.W.10 and P.W.12 to P.W.15, who are the crucial witnesses and would submit that if the petitioner is not granted permission to recall witnesses and cross examine them, the case of the petitioner will be a case of no defence and it will ultimately result in conviction and further result in second round of litigation. He would further submit that the petitioner was

placed under suspension from the year 2005 and he was unable to get effective legal advice and thereby he had failed to cross examine the witnesses. He would submit that the petition may be allowed and an opportunity may be given to the petitioner to cross examine the witnesses, on appearance and that the petitioner is ready to abide by any condition that may be imposed on him and would submit that the petitioner will cross examine the witnesses on the same day on their appearance before the trial Court.

3. The learned Additional Public Prosecutor would vehemently oppose the petition and submit that for recalling the witnesses no satisfactory reason had been stated by the petitioner. He would further submit that the learned Chief Judicial Magistrate, Erode, had rightly taking into consideration, that the petition has been filed only at the stage of 313 questioning on which date the petitioner was asked to furnish the list of defence witnesses, had rightly dismissed the petitioner following the directions of the Hon'ble Supreme Court in various decisions.

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. Moreover, in this case the petition to recall has been filed much belatedly at this state of 313 questioning and the learned trial judge has rightly dismissed the petition.

5. 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 final opportunity can be given to the petitioner/accused to recall the witnesses examined in chief on imposition of cost and fixing terms.

6. 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 submit that the respondent can produce the witnesses in the event of them being ordered to be recalled.

7. At this juncture, the learned counsel for the petitioner would submit that any stringent conditions may be imposed for recalling the witnesses for cross examination by the petitioner and that the petitioner/accused will file an affidavit of undertaking that the witnesses will be cross examined on the same day of their appearance before the trial Court. 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.

8. Taking into consideration, the submissions made by the learned counsel and also taking into consideration the facts and circumstances of this case, the learned Chief Judicial Magistrate, Erode is directed to recall P.W.2 to P.W.7 and P.W.9, P.W.10 and P.W.12 to P.W.15 on convenient dates to be fixed by the trial Court 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.25,000/- on the petitioner, out of which Rs.1,000/- each should be paid to the witnesses on the date of their appearance before the learned Chief Judicial Magistrate, Erode, and the balance amount of Rs.13,000/- should be paid to the concerned District Legal Services Authority and the receipt shall be produced before the learned Chief Judicial Magistrate, Erode, before cross examination of these witnesses.

9. With the above observation, the Criminal Original Petition stands disposed of.
ssi/jer

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.

+2ccs to Mr.A.Nowfal, Advocate S.R.No.70023

KR/25/10/18

Cr1.O.P.No.23292 of 2018



WEB COPY