

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2018

CORAM:

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

CrI.O.P.No.23740 of 2018

&

CrI.M.P.No.13359 of 2018

M.Raju

... Petitioner

/Vs/

The State by
Inspector of Police
V & AC
Coimbatore.

... Respondent

PRAYER: Criminal Original Petition filed under section 482 of Cr.P.C. to set aside the order dated 26.07.2018 passed in C.M.P.No.273 of 2018 in Spl.No.19/2014 on the file of the Chief Judicial Magistrate Court, Tiruppur.

For Petitioner : Mr.I.C.Vasudevan
For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

O R D E R

The Criminal Original Petition has been filed by the petitioner to set aside the order passed by the learned Chief Judicial Magistrate Court, Tiruppur in C.M.P.No.273 of 2018 in Spl.No.19/2014 dated 26.07.2018, dismissing the petition to recall the witnesses.

Brief facts of the case:

2. The petitioner is facing trial for the offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, on the allegations that on 28.02.2011 at about 18.25 hrs, the petitioner received a sum of Rs.10,000/- from the defacto complainant as illegal gratification for fixing the property Tax.

3. P.W.1 had been examined in chief and cross examined and thereafter P.W.2 Mr.Venkatachalam and P.W.3 Mr.K.Rangasamy, have been examined in chief on 21.09.2017 and 07.12.2017. Further

the cross examination of P.W.2 was deferred by a petition under Section 242(3) of Cr.P.C, stating that the petitioner had to obtain some documents from the Tiruppur Corporation, so as to enable him to cross examine the witnesses. The prayer was considered by the trial Court and the petition was allowed in C.M.P.No.692 of 2017.

4. On 07.12.2017 P.W.3 Mr.Rangasamy was examined in chief. Thereafter both the witnesses have appeared before the trial Court on 15.02.2018 for the purpose of cross examination. However they were not cross examined on 15.02.2018, since the counsel for the petitioner/accused was indisposed. Thereafter petition to recall the witnesses P.W.2 and P.W.3 had been filed on 12.04.2018. The trial Court, taking into consideration the dictum laid by the Hon'ble Apex Court regarding recall of witnesses and also observing that no proof has been filed in respect of ill health of the counsel on the day of cross examination i.e., on 15.02.2018 had dismissed the application to recall the witnesses. The trial Court had also found that sufficient opportunity and breathing time had been given to the petitioner/accused to participate in the proceedings, however he had failed to cross examine the witnesses on 15.02.2018 and thereby dismissed the petition for recalling the witnesses. This Criminal Original Petition has been filed to set aside the order of dismissal passed by the learned Chief Judicial Magistrate Court, Tiruppur in C.M.P.No.273 of 2018 in Spl.No.19/2014 dated 26.07.2018.

5. I have gone through the records and I find no error or infirmity in the order passed by the trial Court. The learned trial Judge taking into consideration the decision rendered by the Hon'ble Apex Court regarding recall of witnesses and jurisdiction in the process of trial had rightly dismissed the application for recalling the witnesses. Further the trial Court had also observed that no proof had been furnished regarding the of ill health of the counsel for the petitioner on the day of cross examination i.e., on 15.02.2018.

6. The learned counsel for the petitioner would submit that one Mr.C.Loganathan, aged about 67 years was defending the petitioner and that on 15.02.2018, he was indisposed due to hyper tension and diabetes and that he was unable to cross examine the witnesses. He would further submit that P.W.2 and P.W.3 are crucial witnesses and that if the petitioner is not allowed to cross examine those witnesses, it will virtually amount to a case of no defence. He would also submit that the petitioner as well as the learned counsel for the petitioner appearing before the trial Court have filed affidavits before this Court, stating that the counsel for the petitioner was indisposed on 15.02.2018, due to hyper tension. It is relevant to refer to para 4 of the affidavit filed by Mr.C.Loganathan,

learned counsel for the petitioner appearing before the trial Court.

" I submit that in fact, the said case was posted for cross examination of P.W.2 and P.W.3 namely one Venkatachalam and Rangasamy on 15.02.2018. Since due to my old age and also I have been suffering from severe Hypertension and Diabetic, I was not feeling well and bedridden on that day. Hence I was unable to appear before the Hon'ble Court and cross examine those witnesses on behalf of my client namely M.Raju. The said non appearance before Court was neither wilful nor wanton but beyond my control."

The learned counsel would pray that one opportunity may be granted and that the witnesses may be recalled and permitted to be cross examined.

7. The learned Additional Public Prosecutor would vehemently oppose the petition stating that P.W.2 was examined in chief on 21.09.2017 and P.W.3 was examined on 07.12.2017. Further cross examination of P.W.2 was deferred on a petition filed by the petitioner and despite the presence of the witnesses on 15.02.2018, the petitioner has failed to cross examine them and thereby the learned trial Judge has rightly dismissed the petition.

8. As stated above, I find no infirmity or error in the order passed by the learned trial Judge. However this Court is able to visualize the fact 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 by the prosecution chief and ultimately it may only lead to multiplicity of proceedings and a second round of litigation on a later point of time.

9. Though this Court does not appreciate the conduct of the petitioner in not cross examining the witnesses on the day of their appearance this Court in the interest of fair trial and the interest of justice is of the opinion that one final opportunity can be given to the petitioner/accused to recall the witnesses examined in chief by imposing terms and costs.

10. This Court enquired the learned Additional Public Prosecutor about the stage of the case and the availability of the witnesses examined in chief, viz., P.W.2 and P.W.3.

11. The learned Additional Public Prosecutor would submit that the case as of now stands posted on 06.12.2018 for examination of other remaining witnesses and that meanwhile L.W.5 has been examined in chief as P.W.4 and that the petitioner have also not cross examined P.W.4. He would submit that P.W.2 and P.W.3 are available for cross examination.

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

13. The learned Additional Public Prosecutor would further submit that the respondent police would be able to produce the witnesses P.W.2 and P.W.3 before the trial Court on 06.12.2018 in the event of the respondent police being directed to produce them before the trial Court. He would further submit that the petitioner should file an undertaking that he would not delay the trial.

14. Taking into consideration the facts and circumstances of the case and the submissions made by the learned counsels on either side, since the cross examination of P.W.2 and P.W.3 are very much relevant for arriving at a just decision of the case, this Court finds that an opportunity can be given to the petitioner/accused and that on appearance of the P.W.2 and P.W.3 before the trial Court on 06.12.2018, the petitioner shall cross examine them on the same day. This Court also imposes a cost of Rs.15,000/- (Rupees Fifteen Thousand Only) on the petitioner. The petitioner shall also file a petition to recall the witness P.W.4 without any delay and upon filing of such petition the trial Court shall consider the same and fix the date for appearance of P.W.4 and on appearance of P.W.4 before the trial Court the petitioner shall cross examine him on the same day without taking any adjournment. Out of the cost of Rs.15,000/-, each of the witnesses should be paid Rs.1,000/- on the day of their appearance before the trial Court for cross examination. The balance amount of Rs.12,000/- shall be paid to the concerned District Legal Services Authority and the receipt shall be furnished to the trial Court.

15. With this observation the Criminal Original Petition has been disposed of. Consequently connected miscellaneous petition is closed.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The Chief Judicial Magistrate Court, Tiruppur.
 2. The Public Prosecutor
High Court, Chennai-104.
 3. The Inspector of Police
V & AC
Coimbatore.
 4. The Secretry
District Legal Service Authority
Thiruppur.
- +1 CC to Mr.I.C. Vasundra, Advocate sr 71650.

Cr1.O.P.No.23740 of 2018
&
Cr1.M.P.No.13359 of 2018

SV(CO)
SP(02/11/2018)

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