

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.11.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.27236 of 2018
and
Crl.M.P.No.15712 of 2018

P.C.Dhandapani

... Petitioner

Vs.

The State rep. by
Inspector of Police,
Thiruthuraipoondi Police Station,
Thiruthuraipoondi,
Thiruvarur District.

... Respondent

Prayer: Criminal Original petition filed under Section 482 of the Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.1239 of 2017 in the above S.C.No.12/2017 passed by the Principal District and Sessions Judge, Thiruvarur.

For Petitioner : Mr.R.Anburaj

For Respondent : Mr. M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

This petition has been filed challenging the order passed by the Court below, allowing the application filed under Section 311 of the Criminal Procedure Code by the respondent police.

2. The learned counsel for the petitioner would submit that the petitioner is facing trial before the Court below for an offence under Sections 420, 448, 465 of Indian Penal Code and Section 3 (1) of TNPPDL Act. In this case, the trial commenced on 13.03.2017, and Section 313 of Cr.P.C. questioning was also completed and totally six prosecution witnesses were examined. While examination of the witnesses was about to be completed, the prosecution filed an application under Section 311 of the Criminal Procedure Code, seeking to re-call PW.1 for the purpose of marking certain documents. The learned counsel for the petitioner would submit that except for three documents, all the other documents have come into existence after filing of the

case. The learned counsel would further submit that these documents were filed along with charge-sheet and it is unnecessary to mark all these documents through P.W.1. The learned counsel would further submit that the prosecution wants to fill up the lacuna and the Court below ought not to have allowed the petition filed by the prosecution.

3. The learned Additional Public Prosecutor would submit that the power given under Section 311 of Criminal Procedure Code is a very wide power and if the Court is satisfied that re-calling of the witness and marking of the document is necessary for the purpose of taking a just decision in this case, the best available evidence should be brought before the Court. The learned counsel would further submit that the Court below has satisfied itself with regard to the reasons for re-calling PW.1 and marking of the relevant documents and there is no illegality or infirmity in the order passed by the Court below.

4. This Court has carefully considered the submissions made on either side.

5. The prosecution has filed an application for re-call of PW.1 for the purpose of marking certain documents. The Court below has considered the objection made by the petitioner and has given a specific finding that the re-call of PW.1 and the marking of the documents is required for the purpose of coming to a just decision. Unless this Court finds any perversity in the order passed by the Court below, this Court will not interfere with a discretionary order passed under Section 311 of Criminal Procedure Code. Further the petitioner can always cross-examine PW.1 and can also put questions with regard to the documents marked by the prosecution. It is seen, that the right of the petitioner to cross-examine PW.1 with regard to all the aspects which the prosecution is trying to bring in by way of re-calling, is left intact. Therefore, this Court is not inclined to interfere with the order passed by the Court below.

6. This Criminal Original Petition stands disposed of with a direction to the Court below to complete the proceedings within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

nmm/dss

To

1. The learned Principal District and Sessions Judge,
Thiruvarur.
2. The Inspector of Police,
Thiruthuraipoondi Police Station,
Thiruthuraipoondi,
Thiruvarur District.
3. The Public Prosecutor,
Madras High Court, Chennai.

CrI.O.P.No.27236 of 2018
and
CrI.M.P.No.15712 of 2018



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