

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.29110 of 2018
and Cr1.M.P.No.17016 of 2018

1.Gopinath
2.Nandakumar

...Petitioners/Accused

Vs.

1.State rep by
The Sub Inspector of Police,
Komarapalayam Police Station,
Namakkal District
Crime No.280 of 2014

...Respondent/Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records in C.M.P. No.40 of 2018 in S.C.No.77 of 2016 order dated 05.04.2018 on the file of the learned Additional District and Sessions Judge, Namakkal and to set aside the same.

For Petitioners : Mr.K.T.S.Sivakumar

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

सत्यमेव जयते

O R D E R

This petition has been filed by the petitioners challenging the order passed by the Court below dismissing the application filed by the petitioners Under Section 311 Cr.P.C, to recall and cross examine PW1 to PW6. The petitioners have been arrayed as A1 and A2 in the Final Report. The petitioners are facing trial for the offences under Section 449,392,302 r/w 34, 302 r/w 201 IPC.

2 It is seen from the Final Report that there are totally 22 witnesses shown as list of witnesses. The prosecution examined 7 witnesses. The petitioners did not cross examine PW1 to PW6. Therefore, the petition was filed before the Court below under Section 311 Cr.P.C, seeking to recall and cross examine PW1 to PW6. This petition has been dismissed by the Court below by an order dated 05.04.2018 on the ground that the petitioners should have cross examined the witnesses on the same day they were examined in chief. For this purpose, the Court below had relied upon the judgment of the Honourable Supreme Court in Vinoth Kumar Vs. State of Punjab reported in 2015 2 SCC 220.

3 The learned counsel for the petitioners would submit that PW1 to PW4 were examined on the same day on 24.01.2018. Subsequently, PW5 and PW6 were examined on 08.02.2018. Since, the learned counsel representing the petitioners did not cross examine these witnesses, their evidence was closed. The petitioners filed a petition under Section 311 Cr.P.C on 22.02.2018. In the said petition, the petitioners have stated that they have changed the learned counsel and they are engaging a new counsel for the purpose of conducting the case.

4 It is true that a petition under Section 311 Cr.P.C, cannot be allowed merely because the accused persons have changed the counsel. This position of law is now well settled. That apart the Court below was also right in stating that the witnesses must be cross examined on the same day they are examined in Chief and the Honourable Supreme Court Judgement in Vinoth Kumar Vs. State of Punjab reported in 2015 2 SCC 220 has categorically established this position of law.

5 Admittedly, the case is still in the stage of trial and only seven witnesses have been examined till now. The petitioners have approached the Court below by filing petition under Section 311 Cr.P.C, at the earliest point of time. That apart the petitioners are facing serious charges under Section 392 and 302 IPC and therefore, sufficient opportunity must be given to the petitioners to defend themselves before the Court below. Therefore this Court is of the considered view that one last chance can be given to the petitioners in order to recall and cross examine PW1 to PW6.

6 Therefore, this petition is allowed and the order passed by the court below in CrI.M.P.No. 40 of 2018 dated 05.04.2018 is hereby set aside. The Court below is directed to issue summons to PW1 to PW6 and fix a date for cross examination. On the day when PW1 to PW6 appears before the Court for giving evidence, on the same day, the learned Counsel for the petitioners will have to cross examine those witnesses. If for any reason the petitioners failed to cross examine PW1 to

PW6, on the same day when they appear, the petitioners shall forfeit their right to recall those witnesses in future. It is also made clear that the petitioners shall cross examine all the other witnesses examined by the prosecution, on the same day they are examined in chief.

7 The Court below is further directed to complete the proceedings in S.C.No. 77 of 2016 with in a period of Six months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mpa/rpl

To

- 1.The Sub Inspector of Police,
Komarapalayam Police Station,
Namakkal District
- 2.The learned Additional District and Sessions Judge,
Namakkal
- 3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.K.T.S.Sivakumar, Advocate sr.no.86364

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