



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CrI.O.P.(MD).No.1675 of 2018

and

CrI.M.P.(MD).No.713 of 2018

S.Raja

.. Petitioner/Petitioner/Accused

Vs.

M.Uthaya Suriyan

.. Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order passed in Cr.M.P.No.6430 of 2017 in S.T.C.No.843 of 2009, dated 24.01.2018, on the file of the learned Judicial Magistrate No.II, Sattur.

For Petitioner : Mr.E.Somasundaram

ORDER

This petition has been filed to set aside the order passed in Cr.M.P.No.6430 of 2017 in S.T.C.No.843 of 2009, dated 24.01.2018, on the file of the learned Judicial Magistrate No.II, Sattur.

2.Heard the learned counsel appearing for the petitioner and perused the materials placed on record.

3.The learned counsel appearing for the petitioner would submit that the petitioner filed an application under Section 311 Cr.P.C., in Cr.M.P.No.6430 of 2017 in S.T.C.No.834 of 2009, on the file of the learned Judicial Magistrate No.II, Sattur, to recall the witnesses. The learned Magistrate dismissed the said application by relying upon the decision of the Hon'ble Supreme Court reported in 2013(2) LW (CrI.) 384, by stating that since the evidence of both side are completed, at this stage, without reopening the case, the application filed by the petitioner to recall the witnesses cannot be entertained. Aggrieved by the same, the petitioner has approached this Court with this petition to set aside the said order passed by the Court below.

4. The learned counsel appearing for the petitioner would submit that due to bonafide reasons only the petitioner filed the recall application belatedly. But the learned Magistrate without



considering the contention of the petitioner dismissed the application. He further submitted that the present counsel has filed change of vakalat to appear for the petitioner.

5. For the above said contention made by the learned counsel appearing for the petitioner, the Hon'ble Supreme Court in the decision reported in (2016) 2 SCC 402 in the case of State (NCT of Delhi) vs. Shiv Kumar Yadav and another in paragraph No.29, has held as follows:

"29. We may now sum up our reasons for disapproving the view of the High Court in the present case:

(i) The trial Court and the High Court held that the accused had appointed counsel of his choice. He was facing trial in other cases also. The earlier counsel were given due opportunity and had duly conducted cross-examination. They were under no handicap;

(ii) No finding could be recorded that the counsel appointed by the accused were incompetent particularly at the back of such counsel;

(iii) Expeditious trial in a heinous offence as is alleged in the present case is in the interests of justice;

(iv) The trial Court as well as the High Court rejected the reasons for recall of the witnesses;

(v) The Court has to keep in mind not only the need for giving fair opportunity to the accused but also the need for ensuring that the victim of the crime is not unduly harassed.

(vi) Mere fact that the accused was in custody and that he will suffer by the delay could be no consideration for allowing recall of witnesses, particularly at the far end of the trial;

(vii) Mere change of counsel cannot be ground to recall the witnesses;

(viii) There is no basis for holding that any prejudice will be caused to the accused unless the witnesses are recalled;

(ix) The High Court has not rejected the reasons given by the trial court nor given any jurisdiction for permitting recall of the witnesses except for making general observations that recall was necessary for ensuring fair trial. This observation is contrary to the reasoning of the High Court in dealing with the reasons for recall i.e., denial of fair opportunity on account of incompetence of earlier counsel or on account of expeditious proceedings;



(x) There is neither any patent error in the approach adopted by the trial court rejecting the prayer for recall nor any clear injustice if such prayer is not granted."

6. In yet another judgment of the Hon'ble Supreme Court reported in (2016) 8 SCC 762 wherein in paragraph No.42 it has been held as follows:

" 42. We have already explained the use of the words "magnanimous approach" and how it should be understood. Regard being had to the concept of balance, and weighing the factual score on the scale of balance, we are of the convinced opinion that the High Court has fallen into absolute error in axing the order passed by the learned trial Judge. If we allow ourselves to say, when the concept of fair trial is limitlessly stretched, having no boundaries, the orders like the present one may fall in the arena of sanctuary of errors. Hence, we reiterate the necessity of doctrine of balance."

7. In the light of the above said decisions of the Hon'ble Supreme Court and the facts of the case, this Court is of the opinion that there is no illegality or irregularity in the order passed by the Court below. At this stage, the learned counsel appearing for the petitioner submitted that an opportunity may be granted to the petitioner for further arguments in the above said S.T.C.No. 843 of 2009 on the file of the learned Judicial Magistrate No.II, Sattur.

8. In view of the above, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is dismissed. However, liberty is granted to the petitioner to approach the Court concerned for filing appropriate application for getting time for further arguments in the above said case.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.II, Sattur.

Cr1.O.P(MD)No.1675 of 2018

04.04.2018