



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD) No.30 of 2018

Vellaipoonai @ Vignesh

...Petitioner / Petitioner / A1

vs.

The State, rep.by its
The Deputy Superintendent of Police
Silaiman Police Station
Madurai District
In Crime No.470 of 2017

..Respondent / Respondent /
Complainant

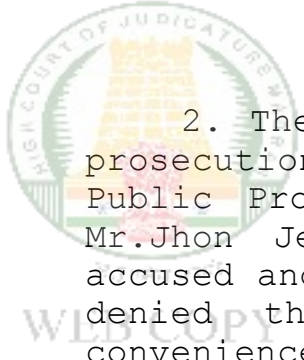
PRAYER: Criminal revision filed, under Section 397 r/w 401 Cr.P.C., to call for the records of the proceedings in Crl.M.P.No.2461 of 2017 in Spl.S.C.No.91 of 2017, dated 28.12.2017, passed by the learned III Additional District and Sessions Judge (PCR), Madurai.

For Petitioner : Mr.M.Jegadeesh Pandian

For Respondent : Mrs.S.Bharathi
Govt. Advocate (Crl.Side)

O R D E R

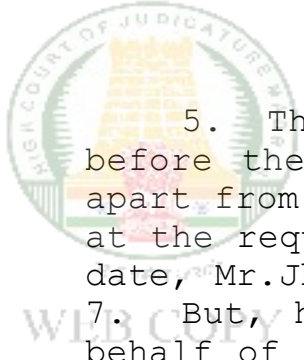
The accused 1 to 7 are facing a prosecution in Spl.S.C.No.91 of 2017, before the learned III Additional District and Sessions Judge (PCR), Madurai, for the offence under Sections 147, 148, 302, 506(ii) and 120-B I.P.C., and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of SC/ST (POA) Amendment Act, 2015. Charge sheet was filed and cognizance was taken on 13.11.2017. All the accused appeared before the Trial Court on 15.11.2017 and they were furnished with copies of documents under Section 207 Cr.P.C. Thereafter, the case was adjourned to 22.11.2017 for engaging counsel. On 22.11.2017, Mr.Jhon Jeyaseelan Jacop, Advocate, filed a memo of appearance for A2 and A7 and the case was adjourned to 29.11.2017. On 29.11.2017, Mr.Jhon Jeyaseelan Jacop filed memo of appearance for A1 and A3 also. The other accused, namely, A4, A5 and A6 made their own arrangement for engaging counsel.



2. The learned Special Public Prosecutor opened the case for prosecution on 30.11.2017. On 04.12.2017, the learned Special Public Prosecutor and the defence counsel were heard including Mr.Jhon Jeyaseelan Jacop and charges were framed against the accused and when the same were read and explained to accused, they denied the charges. Subsequently, after ascertaining the convenience of the learned Special Public Prosecutor and the defence counsel, the Trial Court fixed the trial on 26.12.2017, 27.12.2017, 28.12.2017 and 29.12.2017 and issued summons to L.Ws.1 to 14 for the hearing on 26.12.2017, L.Ws.15 to 22 for the hearing on 27.12.2017 and L.Ws.23 to 28 for the hearing on 28.12.2017 and L.W.29 for the hearing on 29.12.2017.

3. During the pendency of the proceedings, A2, A4 to A7, who were all in custody, filed bail applications through their respective counsels. A7 filed bail application in Cr.M.P.No.2326 of 2017 through his counsel Mr.Jhon Jeyaseelan Jacop and arguments were heard. Thereafter, on 04.12.2017, the Trial Court granted bail to A7. On 26.12.2017, as per the earlier schedule, L.Ws.1 to 14 were present in the Court. But, Mr.Jhon Jeyaseelan Jacop did not appear before the Trial Court. It may be relevant to state that Mr.Jhon Jeyaseelan Jacop was appearing for A1, A3 and A7. Since he was not present, his clients filed an application before the Trial Court stating that they need a legal aid counsel to represent them. Therefore, the Trial Court appointed one Mr.Kayalarasan as a legal aid counsel on 26.12.2017 and he was furnished with copies of documents free of cost. The prosecution examined P.Ws.1 to 7 on 26.12.2017 and on behalf of A2, A4 and A5, the witnesses were cross-examined. Mr.Kayalarasan, legal aid counsel, filed an application seeking adjournment to cross-examine P.Ws.1 to 7, since he was appointed only on 26.12.2017. The permission sought for by the legal aid counsel was granted by the Trial Court and P.Ws.1 to 7 were directed to appear on 28.12.2017.

4. As per the earlier schedule, on 27.12.2017, L.Ws.15, 16, 18, 19, 21 and 22 were present. However, A5 absented himself and his Advocate Mr.Thangapandian appeared in the Court and withdrew the memo of appearance. Therefore, on 27.12.2017, on account of the absence of A5 and the withdrawal of the memo of appearance, the prosecution was not able to examine the witnesses and the witnesses were sent away without they being examined. Subsequently, the case was adjourned to 28.12.2017. In the meanwhile, on 27.12.2017, Mr.Jhon Jeyaseelan Jacop, Advocate, filed memo of appearance once again on behalf of A1, A3 and A7 and also filed a petition in Cr.M.P.No.2449 of 2017 stating that he has not been furnished with copies of several documents under Section 207 Cr.P.C. The said petition was dismissed by the Trial Court on merits holding that 207 Cr.P.C., papers were furnished to the accused in the Open Court and it contained all the documents and the assertion that some of the documents were missing was not true.



5. Thereafter, on 28.12.2017, A5 voluntarily surrendered before the Trial Court and L.Ws.18, 20 to 28 were also present, apart from P.Ws.1 to 7, who were bound over to appear on that date at the request of Mr.Kayalarasan, legal aid counsel. Even on that date, Mr.Jhon Jeyaseelan Jacop could have cross-examined P.Ws.1 to 7. But, he did not do so. Instead, he filed an application on behalf of A1, A3 and A7 in Crl.M.P.No.2461 of 2017, under Section 231(2) Cr.P.C., alleging that several documents have to be re-issued to him and that the cross-examination of P.Ws.1 to 7 should be deferred.

6. The Trial Court, by order dated 28.12.2017, dismissed the said petition in Crl.M.P.No.2461 of 2017. Challenging the same, A1 alone has filed the present revision. Perhaps the other accused are waiting to file a fresh petition depending upon the outcome of this revision. This tactics of forum shopping cannot be permitted because A1, A3 and A7 filed a common petition in Crl.M.P.No.2461 of 2017 through the same counsel and the Trial Court order dismissing the petition is challenged before this Court in revision proceedings under Section 397 Cr.P.C., and the same order cannot be challenged again and again by different accused. To reiterate, Crl.M.P.No.2461 of 2017 in Spl.S.C.No.91 of 2017 was filed by Vellaipoonai @ Vignesh / A1, Prabhu / A3 and Karthick Raja / A7, through their counsel Mr.Jhon Jeyaseelan Jacop. Whereas, the present revision has been filed only by Vellaipoonai @ Vignesh / A1 and the other two accused have not joined him. So, they cannot once again challenge the same impugned order in Crl.M.P.No.2461 of 2017, dated 28.12.2017.

7. Heard Mr.M.Jegadeesh Pandian, learned counsel for the petitioner and Mrs.S.Bharathi, learned Government Advocate (Criminal Side) for the respondent - Police and perused the materials filed in the form of typed set.

8. Mr.M.Jegadeesh Pandian, learned counsel for the petitioner, submitted that a document, namely Ex.P1 / original complaint, which forms the basis of F.I.R., which was not furnished to the accused, has been marked through P.W.1. This submission cannot be countenanced, because, the list of documents appended to the charge sheet shows the F.I.R., as the first document. Normally, a photocopy of the complaint and the F.I.R., will be stapled and kept as integral document and given to the accused along with 207 Cr.P.C., papers. Assuming for a moment that the copy of the original complaint was not given at the time of furnishing of 207 Cr.P.C., papers, the learned counsel for the accused could have raised his objection immediately. That apart, the original complaint is available in the Court record and the same could have been inspected by filing a memo. But, the learned counsel did not do so. ~~At the time of framing of charges by the Trial Court.~~ For the first time, this plea was taken on 28.12.2017, after P.Ws.1 to 7 were examined on 26.12.2017.



9. Mr.M.Jegadeesh Pandian, learned counsel for the petitioner, further submitted that P.W.8 - Dr.Jayakumar has marked a copy of the Accident Register, but, however, the same was not furnished to the accused along with the papers under Section 207 Cr.P.C. This objection was also not taken either at the time of receiving the papers under Section 207 Cr.P.C., on 15.11.2017 nor on the date when the Trial Court heard the learned Special Public Prosecutor and the defence counsel for framing charges.

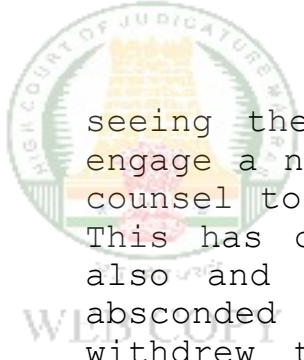
10. Mr.M.Jegadeesh Pandian, learned counsel for the petitioner, further submitted that the junior of Mr.Jhon Jeyaseelan Jacop, by name, Saravanan had died on 26.11.2017 and therefore, the learned counsel was not able to properly appear before the Trial Court. It is seen that even according to the accused, Mr.Saravanan had unfortunately died on 26.11.2017, but however, the trial was fixed on 26.12.2017 that is one month after the death of Saravanan and therefore, the reason touted cannot hold water.

11. Mr.M.Jegadeesh Pandian, learned counsel for the petitioner, placed very strong reliance on the decision of this Court in Karvendan vs. State, reported in (2014) 1 MLJ (Cr1) 111, wherein the Honourable Division Bench has held that if any additional document is to be filed, the prosecution should furnish a copy of the same in advance to the accused and an opportunity should be given to the accused to go through the document and cross-examine the witnesses relating to the document.

12. There can be no quarrel with the law laid down in the above cited decision. However, the facts of the present case are different. In this case, all the documents were furnished under Section 207 Cr.P.C., on 15.11.2017 and Mr.Jhon Jeyaseelan Jacop entered appearance on 22.11.2017 and after hearing both sides, charges were framed on 04.12.2017. Only after ascertaining his convenience, 26.12.2017, 27.12.2017, 28.12.2017 and 29.12.2017 were fixed for trial. Under Section 309 Cr.P.C., trial should be conducted on day-to-day basis. At this stage, it may be relevant to extract the fourth proviso to Section 309 Cr.P.C., hereunder:

"the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment."

Thus, as per Fourth proviso to Section 309 Cr.P.C., when the pleader is engaged in another Court, that cannot be a reason for granting adjournment. The absence of Mr.Jhon Jeyaseelan Jacop on 26.12.2017 for no reason at all cannot be countenanced. In fact, the learned Trial Judge has gone one step ahead in appointing a legal aid counsel for the accused on 26.12.2017 and bound over the witnesses to appear on 28.12.2017 for cross-examination of the witnesses. This is one of the techniques adopted in the Trial Courts to prolong the proceedings. On the date of trial, on



seeing the witnesses, the accused would say that they want to engage a new counsel, then, one adjournment will be given for the counsel to go through the papers and cross-examine the witnesses. This has come to the notice of this Court in the earlier cases also and this is not something new. Even in this case, A5 absconded on 27.12.2017 and his counsel, by name, Thangapandian withdrew the memo of appearance and again, he surrendered on 28.12.2017.

13. Mr.M.Jegadeesh Pandian, learned counsel for the petitioner, submitted that the petitioner / A1 is in jail and there is no reason to prolong the trial and therefore, this Court may show some indulgence.

14. In State of Haryana vs. Ram Mehar, reported in 2016 (8) Scale 192 and in A.G. vs. Shiv Kumar Yadav and another, reported in (2015) 9 Scale 649, the Honourable Supreme Court has held that just because the accused is in jail that cannot be a reason for recalling the witnesses. That apart, this is a case arising under the SC/ST Act and Section 14(3) of SC/ST Act reads as under:

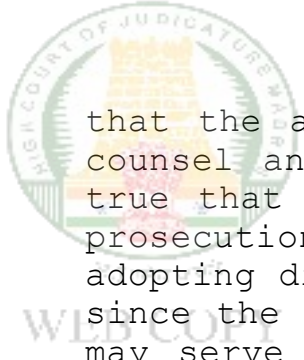
"(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet"

Hence, the Trial Court is required to complete the trial in two months time. A request to defer cross-examination under Section 231(2) Cr.P.C., shall be made on the day when the chief-examination is completed. That too a wholesale deferring cannot be prayed. In this case, the chief-examination of P.Ws.1 to 7 was done on 26.12.2017 and on that day, no request was made under Section 231(2) Cr.P.C. Whereas, the petition under Section 231(2) Cr.P.C., was filed only on 28.12.2017 only to drag on the proceedings in order to tire out the witnesses.

15. In such view of the matter, this Court does not find any infirmity or illegality in the order passed by the Trial Court warranting interference.

16. This Court is also aware that the accused will now resort to the Section 311 application under Section 311 of the Code of Criminal Procedure to recall the witnesses, after having failed in the present attempt. This has to be thwarted, because, it is obvious



that the accused have been adopting dilatory tactics by changing counsel and not cross-examining the prosecution witnesses. It is true that some of the accused are diligently cross-examining the prosecution witnesses, but, the accused Nos.1, 3 and 7 are adopting dilatory tactics. However, this Court is of the view that since the accused are facing charges under Section 302 I.P.C., it may serve the ends of justice, if some witnesses are re-called, even though this Criminal Revision Case relates to deferring the cross-examination of only P.Ws.1 to 7.

17. Keeping in mind the interest of the accused, this Court is of the view that an opportunity should be given to the accused to cross-examine the following witnesses:

- i. P.W.1 - Murugan
- ii. P.W.2 - Siva
- iii. P.W.8 - Dr. Jayakumar
- iv. P.W.15 - Raja
- v. P.W.17 - Muruganantham, S.I., and
- vi. P.W.19 - Vanitha, I.O.

On the appearance of the above witnesses, the learned Special Public Prosecutor shall permit them to go through their deposition in chief, so that they can refresh their memory and only thereafter, they shall be put into the Witness Box for cross-examination.

18. With the above directions, the criminal revision is disposed off accordingly.

Sd/-
Assistant Registrar(C.o.)

/True Copy/

Sub Assistant Registrar

To:

1. The III Additional District Judge and
Sessions Judge (PCR), Madurai.
2. The Deputy Superintendent of Police,
Silaiman Police Station, Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr. M. Jagadeesh Pandyan, Advocate, SR.No. 42525

Cr1.R.C.(MD) No.30 of 2018
12.01.2018