



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD) No.38 of 2018andCrl.M.P.(MD) No.427 of 2018

Ravikumar ... Petitioner / Petitioner / Accused

vs.

State, through
Sub Inspector of Police
Chinnamanur Police Station
Theni District
Complainant
(Cr.No.371 of 2012)

... Respondent /

PRAYER: Criminal revision filed, under Section 397 r/w 401 Cr.P.C., to call for the records in Crl.M.P.No.7003 of 2017, dated 14.12.2017, on the file of the learned Judicial Magistrate, Uthamapalayam and set aside the same.

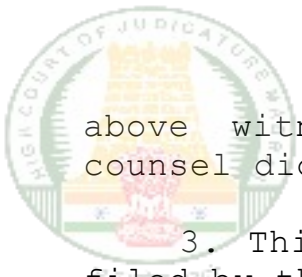
For Petitioner : Mr.M.A.M.Raja

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

O R D E R

The petitioner is facing trial in C.C.No.299 of 2013, before the learned Judicial Magistrate, Uthamapalayam, for the offences under Sections 279, 337, 394-A I.P.C. The prosecution examined Muthukumar / P.W.1 on 15.11.2016; Muthiah / P.W.2 on 15.11.2016; Subramani / P.W.3 on 15.11.2016; Elangovan / P.W.4 on 19.12.2016; Ramar / P.W.5 on 19.12.2016; Nagaraj / P.W.8 on 07.02.2017 and Napoleon / P.W.9 on 07.02.2017. Whiles, the petitioner filed an application in Cr.M.P.No.7003 of 2017 in C.C.No.299 of 2013, to recall P.Ws.1 to 5, 8 and 9, which has been dismissed by the Trial Court on 14.12.2017. Challenging the same, the present revision

2. The learned counsel for the petitioner submitted that the



above witnesses were not cross-examined, because the defence counsel did not have the necessary documents.

3. This Court perused the petition in Cr.M.P.No.7003 of 2017 filed by the petitioner before the Trial Court.

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4. The reason given in the petition for not cross-examining the witnesses does not cut ice. In Vinod Kumar vs. State of Punjab, reported in 2015 (1) Scale 542, the Honourable Supreme Court has directed that the witnesses should be cross-examined on the day they are examined in chief. Pursuant to the directions of the Honourable Supreme Court, the Registrar (Judicial) of Madras High Court has issued a Circular to all the Trial Courts to follow the law laid down by the Honourable Supreme Court in Vinod Kumar's case. In this case, the petitioner has not given any good reason for not cross-examining the witnesses and therefore, the impugned order passed by the Trial Court does not warrant interference from this Court.

5. Now, it is stated that all the witnesses have been examined and the case is posted for Judgment on 30.01.2018. Though this Court does not find any serious infirmity in the impugned order passed by the Trial Court, this Court is of the view that the petitioner may be given one opportunity to cross-examine two witnesses, namely, Muthu Kumar / P.W.1 and Nagaraj / P.W.8, if they are available. If they have gone abroad or not available, then, the petitioner cannot seek to cross-examine them. The petitioner will not be entitled to recall any other witness, including the Investigation Officer, because, the petitioner cannot be allowed to take advantage of his own wrong.

6. In the result,

- i. The criminal revision is allowed in part and the impugned order, dated 14.12.2017, made in CrI.M.P.No.7003 of 2017 in C.C.No.299 of 2013, by the learned Judicial Magistrate, Uthamapalayam, is partially set aside.
- ii. The learned Judicial Magistrate, Uthamapalayam, is directed to ascertain about the availability of Muthu Kumar / P.W.1 and Nagaraj / P.W.8 and summon them for cross-examination by the petitioner.
- iii. The petitioner shall deposit Rs.1000/- (Rupees one thousand only) each (totally Rs.2,000/-) towards cost, before the Trial Court, to the credit of C.C.No.299 of 2013, within a period of one week from the date of receipt of a copy of this Court, to show his bona fide.

<https://hcservices.ecourts.gov.in/hcservices/> When the witnesses, namely, P.Ws.1 and 8 come for evidence, they must be permitted to read their evidence in chief and only thereafter, the



petitioner will be entitled to cross-examine them.

v. On the day when P.Ws.1 and 8 appear, if the petitioner failed to cross-examine them, even on account of boycott of Courts, the petitioner will forfeit his rights to cross-examine them.

vi. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl. side)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Judicial Magistrate,
Uthamapalayam.
- 2.The Sub Inspector of Police,
Chinnamanur Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.A.M.Raja, Advocate, Sr.No.43424

Cr1.R.C.(MD) No.38 of 2018

and

Cr1.M.P.(MD) No.427 of 2018

23.01.2018

KRK

JM/SKN RSK/SAR 4/24.01.2018/3P/5C