



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRL.O.P. (MD) No. 94 of 2017

and

Cr1.MP (MD) No. 73 of 2017

1. Jeyakumar
2. Sukumari
3. Muthunayagam
4. Satheesh Kumar
5. Rajinal

.. Petitioners

Vs.

1. The Sub Inspector of Police,
All Women Police Station,
Kuzhithurai,
Kanyakumari District.

2. Suja

.. Respondents

Petition is filed under Section 482 of the Criminal Procedure Code to call for the records and set aside the order passed by the CR. M.P.No.4109 of 2016 in C.C.No.142/2004 on the file of the Judicial Magistrate Court, Padmanabhapuram dated 15.09.2016 and allow this Criminal Original Petition.

For Petitioners	: Mr.H.Velavadhas
For R1	: Mr.K.K.Ramakrishnan
	Additional Public Prosecutor
For R2	: Mr.B.William

O R D E R

This Criminal Original Petition has been filed to set aside the order passed in Cr.MP.No.4109 of 2016 in C.C.No.142 of 2004 by the Judicial Magistrate Court, Padmanabhapuram, on 15.09.2016.

2. According to the petitioners, they have filed an application under Section 311 of Cr.P.C., to recall P.Ws.1 to 6, 13 and 14 for the purpose of making cross examination. The said application was dismissed by the Court below. Challenging the same, this petition has been filed.

3. The learned counsel appearing for the petitioners submitted that as per provision under Section 311 Cr.P.C., the petitioners, at any stage, can file application before the Court to recall the witnesses. It is further submitted that sufficient reasons have been stated in the application to recall the witnesses and the omission on the part of the petitioners to cross-examine the aforesaid witnesses is neither willful nor wanton. But, the Court below without giving any opportunity to the petitioners, has



erroneously dismissed the application. Aggrieved by the same, this petition has been filed.

4. Per contra, the learned Additional Public Prosecutor submitted that the petitioners have not adduced satisfactory reasons in the application. Further it is submitted that examination of P.Ws. 1 to 6, 13 and 14 was over as early in the year 2010 and after a lapse of six years, the present application has been filed and therefore, the same is not at all maintainable at this stage. In support of the said contention, he relied upon the decision reported in (2016) 2 Supreme Court Cases 402 [State (NCT of Delhi) v. Shiv Kumar Yadav] and the relevant paragraph is extracted hereunder:-

"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 fag 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 justification 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 grounds 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."



5. The learned Additional Public Prosecutor further relied upon the decision in Vinod Kumar v. State of Punjab reported in (2015) 3 Supreme Court Cases 220, wherein, at paragraphs 57.1 and 57.2, it is stated as follows:-

"57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics."

6. As rightly pointed out by the learned Additional Public Prosecutor, examination of P.Ws.1 to 6, 13 and 14 was over in the year 2010 itself and the prosecution evidence was closed as early as on 04.09.2010 and the present application has been filed after a lapse of six years and no acceptable reason has been adduced by the petitioner to recall the said witnesses. Further, the present application is filed at the fag end of the trial, only to drag on the proceedings. The Court below after considering all the materials available on record has rightly dismissed the petitioner's application and the same does not warrant any interference of this Court.

7. In fine, this Criminal Original Petition is dismissed. Consequently, CrI.MP(MD)No.73 of 2017 is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate Court, Padmanabhapuram.

2. The Sub Inspector of Police,
All Women Police Station,
Kuzhithurai, Kanyakumari District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

MJ

DS/SV/MMS/SAR-1 :10.05.2018: 3P/4C

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