



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.O.P.[MD] No.20132 of 2018

Gobi

: Petitioner

vs.

1.N.Thangaraj
2.Neethi Rajan
3.Selvanayakam
4.Jayaram

: Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining in Cr.M.P.No.4930 of 2017 in C.C.No.1 of 2009 dated 23.02.2018 on the file of the Judicial Magistrate Court No.1, Dindigul and set aside the same.

For Petitioner : Mr.A.Shajahan
For Respondents : Mr.C.Susikumar
(for R2 and R3)

ORDER

This petition has been filed to set aside the order made in Cr.M.P.No.4930 of 2017 in C.C.No.1 of 2009 dated 23.02.2018 on the file of the Judicial Magistrate Court No.1, Dindigul dismissing the petition to examine the further witnesses.

2.The learned counsel for the petitioner/complainant would submit that the petitioner had filed a private complaint against the respondents in respect of illegally detaining the lorry, driver and cleaner of the lorry. He would submit that during the period when the illegal act was committed by the respondents, the petitioner had filed a petition before the concerned Court under Section 97 Cr.P.C for appointment of an Advocate Commissioner and the learned Judicial Magistrate appointed one R.Saminathan, Advocate as Advocate Commissioner and that he conducted inspection at the check post at Sirumalai on 14.10.2008 at 06.00 p.m., and he has also examined the witnesses and having found the lorry, the driver and the cleaner detained at the check post, produced them before the Court with a report. He would further submit that the examination of the Advocate Commissioner is very much essential for arriving at a just decision of the case, since he is a crucial witness who would speak about the acts of the respondents in illegally detaining the driver, cleaner and the lorry and thereby, the petition had been filed under



Section 311 Cr.P.C to examine the Advocate Commissioner, Thiru R.Saminathan and driver Rajan as witnesses on the side of the petitioner.

3.The learned counsel would further submit that the learned Judicial Magistrate had dismissed the petition stating that the petition has been filed at much belated stage in the stage of questioning under Section 313 Cr.P.C and he would submit that as per Section 311 Cr.P.C., any Court may at any stage of any enquiry, trial or other proceedings under the Court, summon any person as a witness and that his recall has to be done to enable the Court to find out the truth and to render its just decision. He would further submit that the Court has got discretionary authority at any stage of enquiry, trial or other proceedings to summon any witness. He would also submit that though the petitioner had shown strong and valid reasons, the learned Judicial Magistrate had refused to summon the witnesses. He would further submit that the learned Magistrate ought to have exercised the discretion granted under Section 311 Cr.P.C judicially to prevent failure of justice.

4.Mr.C.Susikumar, learned counsel appearing for the respondents 2 and 3 would submit that though the discretion under Section 311 is vide, it cannot be allowed to fill up lacuna or improve the case of the prosecution. He would further submit that the case is pending from the year 2009 and that several opportunities had been granted to the petitioner and he having failed to avail the opportunities and having failed to examine the witnesses at an earlier point of time cannot file the petition at this stage and would submit that the trial Court had rightly dismissed the petition.

5.At this juncture, the learned counsel for the petitioner would submit that the petitioner is not only the person responsible for delay of process and that the respondents being the officials have taken several adjournments and that is the reason for the delay. However, he would further submit that examination of the Advocate Commissioner is very much essential for arriving at just decision and would submit that he is even prepared to give up examining the cleaner and would submit that he is prepared to restrict his prayer in respect of the Advocate Commissioner alone.

6.I have gone through the order passed by the learned Judicial Magistrate.

7. It is a fact that the case is pending from the year 2009 and the petition has been filed belatedly. However, weighing the necessity of examining the Advocate Commissioner and the time delay in filing the petition, this Court is of the opinion that the examination of the Advocate Commissioner is very much essential in this case, since the case is in respect of illegal acts alleged to have been by the respondents in detaining the vehicle and persons illegally and thereby the evidence of the Advocate Commissioner is essential.



8.The learned counsel for the respondents would submit that if this Court is of the opinion that the Advocate Commissioner has to be summoned and examined then an opportunity may be given to the respondents to cross examine P.W.1 to P.W.3, since the cross examination in defence had been done based on the evidence let in so far and that in the interest of justice, the petitioner should be allowed to cross examine P.W.1 to P.W.3 by them. He would also submit that the case has been pending from the year 2009 and that the direction may be issued to the Magistrate concerned to complete the trial within a time frame specified.

9.Taking into consideration the submissions made by the counsels, the order made in Cr.M.P.No.4930 of 2017 in C.C.No.1 of 2009 dated 23.02.2018 passed by the Judicial Magistrate Court No.1, Dindigul is set aside. The petitioner shall take steps to examine the Advocate Commissioner on the next hearing date and on such examination, the respondents shall be permitted to recall P.W.1 to P.W.3 and cross examine them with regard to the aspect of examination of the Advocate Commissioner.

With the above directions, this criminal original petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The Judicial Magistrate Court No.1, Dindigul.

- 1 CC TO Mr.C.Susikumar , ADVOCATE IN SR No.98556.
- + 1 CC TO Mr.A.Shajahan , ADVOCATE IN SR No. 98333.
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