

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.5518 of 2019 &
Crl.M.P.No.3155 of 2019

V.Lakshmi Narasimhan .. Petitioner

Vs.

State Represented by
Deputy Superintendent of Police
Vigilance & Anti Corruption Wing
Chennai. .. Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the dismissal order in Crl.M.P.No.4 of 2019 in Special Case No.7 of 2010, pending trial on the file of the learned Chief Judicial Magistrate, Chengalpattu.

For Petitioner : Mr.V.Pavel
For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

ORDER

The petition has been filed seeking to set aside the order passed by the learned Chief Judicial Magistrate, Chengalpattu in Crl.M.P.No.4 of 2019 in Spl.Case No.7 of 2010 dated 10.01.2019, dismissing the petition filed under Section 311 Cr.P.C., to recall copy P.Ws.1 to 5.

2.The learned counsel for the petitioner would submit that since the earlier counsel appearing for the petitioner had not effectively cross examined the witnesses, the petition had been filed to recall and cross examine the witnesses, P.Ws.1 to 5. He would further submit that the cross examination of these witnesses are essential for arriving at a just decision

of this case and that the accused has every right to disprove his case and thereby it is necessary to recall and cross examine the witnesses P.Ws.1 to 5. He would also submit that the trial Judge did not taken into consideration the genuine plea of the petitioner, dismissed the petition filed under section 311 Cr.P.C.,.

3.The learned Additional Public Prosecutor appearing for the respondent would oppose the petition and submit that sufficient time has been given to the petitioner to cross examine the witnesses P.Ws.1 to 5 and he would also submit that P.W.1 was examined in chief on 02.03.2011 and cross examined on the same day. P.W.2 was examined on 01.02.2012 and cross examined on 12.06.2013, after one year and four months. P.W.3 was examined in chief on 07.03.2012 and he was cross examined on 11.03.2015, after a period of about three years. P.W.4 was examined on 17.03.2016 and cross examined on the same day. Finally, P.W.5 was examined in chief on 17.03.2016 and cross examined on the same day. He would further submit that the Hon'ble Apex Court had held that change of counsel cannot be a ground for recalling the witnesses. He would submit that the trial Court had after carefully analyzing the materials rendered a finding stating that the change of memo of appearance had been filed on 09.06.2016 itself and the petition to recall the witnesses had been filed on 02.01.2019, almost after a delay of 2 1/2 years and that the trial Court taking into consideration that the intention was not genuine had rightly dismissed the petition filed under Section 311 Cr.P.C.,.

4.I have gone through the order passed by the learned Chief Judicial Magistrate, Chengalpattu in CrI.M.P.No.4 of 2019 dated 10.01.2019. As stated above by the learned Additional Public Prosecutor, sufficient time had been given to the petitioner to cross examine all the witnesses. Further, P.W.2 had been examined after a period of one year and four months. P.W.3 was examined almost after two years and further the counsel has filed the change of memo on 09.06.2016 and the petition to recall the witnesses had been filed only on 02.01.2019. Taking into consideration the long delay and also finding that the reasons attributed are not genuine, the learned trial Judge had rightly dismissed the petition in accordance with the mandate of the Hon'ble Apex Court in Vinod Kumar Vs. State of Punjab reported in (2015) 3 SCC 220. I find no infirmity in the order passed by the learned trial Judge.

5. Accordingly, the Criminal Original Petition is hereby dismissed. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS iv)

//True Copy//

Sub Assistant Registrar

Jer

To

1. The Chief Judicial Magistrate, Chengalpattu.

2. The Public Prosecutor, High Court of Madras.

3. The Deputy Superintendent of Police,
Vigilance & Anti Corruption Wing, Chennai.

CrI.O.P.No.5518 of 2019 &

CrI.M.P.No.3155 of 2019

A.SK(27/03/2019)



WEB COPY