

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.7374 of 2019
and
Crl.M.P.No.4129 of 2019

Krishnan

.. Petitioner

Vs.

State Represented by
Inspector of Police
Vigilance and Anti-Corruption
Dharmapuri
(Cr.No.07/AC/2009)

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the dismissal order dated 01.03.2019 made in Crl.M.P. No.99 of 2019 in Special C.C. No.11 of 2010, on the file of the Chief Judicial Magistrate Court, Dharmapuri.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

सत्यमेव जयते
ORDER

The Criminal Original Petition has been filed seeking to set aside the order passed by the Chief Judicial Magistrate Court, Dharmapuri, in Crl.M.P.No.99 of 2019 in Spl.C.C. No.11 of 2010 dated 01.03.2019, dismissing the petition filed under Section 311 Cr.P.C., to recall the witnesses P.Ws.2 to P.W.17.

2.The learned counsel for the petitioner would submit that the petitioner is an accused in Spl.C.C. No.11 of 2010, pending on the file of the Chief Judicial Magistrate Court, Dharmapuri, for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, in Crime No.7/AC/2009/DP, registered by the respondent police. He would further that the

petitioner and his wife suffered chronic illness and due to the illness suffered by him and his wife, he had to frequently go to the hospital and thereby he was unable to properly instruct his counsel for cross examination of the prosecution witnesses and after closure of the evidences on the side of the prosecution he had filed the petition for recalling P.Ws.2 to 17 under Section 311 Cr.P.C., whereas, the trial Court had dismissed the petition. He would further submit that the petitioner is aged about 65 years and retired from service and his retirement benefits are withheld, due to the pendency of the case. He would also submit that the trial Judge did not taken into consideration the genuine plea of the petitioner and dismissed the petition stating that the petitioner had not stated valid reasons for recalling the witnesses. He would also submit that if an opportunity is not given to him, it would amount to a case of no defence resulting in denial of fair trial causing grave prejudice which would ultimately end up with a second round of litigation.

3.The learned Additional Public Prosecutor appearing for the respondent vehemently opposed the petition and submit that sufficient time has been given to the petitioner to cross examine the witnesses and he would also submit that P.W.2 was examined in chief by the prosecution on 08.05.2017. P.W.3 was examined on 14.09.2018, P.Ws.6 to 8 were examined on 16.10.2018 and the above said witnesses were not cross examined on the day of their examination in chief. Even thereafter the petitioner had several opportunities to recall and cross examine them whereas he had deliberately avoided to recall them. Further, he would submit that P.Ws.4 and 5 were examined in chief on 09.10.2018, P.W.10 was examined in chief on 20.12.2018 and P.W.11 was examined in chief on 31.01.2019 and the above said witnesses P.Ws. 4, 5, 10 and 11 were not recalled and cross examined, even though the case was posted subsequently on various dates before the closure of evidence. Thereby the trial Court holding that the reasons stated in the petition, for recalling and cross examining the witnesses P.Ws.2 to 17 was not genuine and valid, 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 Court, Dharmapuri, made in CrI.M.P.No.99 of 2019 dated 01.03.2019. I do not find any infirmity in the order passed by the learned trial Judge and he 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.

5.At this juncture, the learned counsel for the petitioner would submit that though there was a serious lapse on the part

of the petitioner/accused in not cross examining the witnesses, if a chance is not given, it would amount to a case of no defence, which will result in second round of litigation and that great prejudice would be caused to him if he is not permitted to recall and cross examine the witnesses. Further he would submit that most of the witnesses sought to be recalled are only official witnesses, who are residents of nearby districts. He would further submit that the petitioner undertakes to cross examine the witnesses on the same day of their appearance before the trial Court. He would also submit that the Court may allow the petition to recall the witnesses, by fixing a particular date and also impose cost on the petitioner/accused. He would further submit that the petitioner/accused will restrict his cross examination with regard to the witnesses P.Ws.2, 3, 4, 5, 10 and 11 alone.

6. P.W.2 is the defacto complainant, on whose complaint, the case was registered; P.W.3 is the shadow witness; P.W.4 is the person who is stated to have handed over cash to the petitioner/accused; P.W.5 is the Accountant in the Office of Sericulture, who is responsible for issuance of cheque; P.W.9 has already been cross examined; P.W.10 is the Trap Laying Officer; P.W.11 is the Investigating Officer. The petitioner is not insisting to recall P.Ws.6, 7 and 8.

7. This Court enquired the learned Additional Public Prosecutor with regard to the availability and convenience of producing the witnesses before the Court and he would on instructions submit that these witnesses are residents of Dharmapuri, Krishnagiri and Salem districts and that if the trial Court fixes a date and recalls the above mentioned witnesses for cross examination, the respondent police will be able to produce them before the trial Court on the particular date on summons from the Court. He would further submit that the petitioner shall ensure that he will not take any further adjournments for cross examining the witnesses and also sought for an undertaking from the learned counsel for the petitioner/accused that he will cross examine the witnesses on the same date of their appearance before the trial Court.

8. Though, this Court does not find any infirmity in the order passed by the learned trial Judge, in order to give an opportunity of fair trial this Court is of the opinion that one more chance may be given to the petitioner/accused to recall and cross examine the witnesses. The learned trial Judge is directed to permit the petitioner to recall the witnesses P.Ws.2, 3, 4, 5, 10 and 11. The petitioner shall pay the cost of Rs.10,000/- before the trial Court on the next hearing date, out of which Rs.1,000/- each shall be paid to the witnesses, on the date of their appearance before the trial Court and the remaining amount

of Rs.4,000/- shall be paid to the Dharmapuri District Legal Services Authority. The petitioner shall file a process application on the next hearing date and the learned trial Judge in consultation with the Prosecutor appearing before the trial Court fix the dates for appearance of the witnesses. Petitioner/accused shall also file an affidavit of undertaking that the witnesses will be cross examined on the date of their appearance and further on completion of the cross examination, he will argue the case on the next hearing date without taking further adjournments and the learned trial Judge is directed to complete the trial as expeditiously as possible.

9. With these observations, the Criminal Original Petition is disposed of. Consequently connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate Court,
Dharmapuri.
2. The Public Prosecutor,
High Court of Madras.
3. The Inspector of Police,
Vigilance and Anti-Corruption
Dharmapuri
(Cr.No.07/AC/2009)

+1cc to Mr. C.Prabakaran, Advocate, SR.No.27961

RR(CO)
Kak(25/03/2019)

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CrI.M.P.No.4129 of 2019