

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.06.2019
CORAM:
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH
Crl.O.P.No.7668 of 2019
and
Crl.M.P.No.4193 of 2019

1. Yuvaraj
2. Gowtham
3. Karthik
4. Ramachandran
5. Somasundaram

...Petitioners

Vs.

The State rep. by
The Inspector of Police
Komarapalayam Police Station,
Komarapalayam,
Namakkal District.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to set aside the order dated 20.02.2019 made in C.M.P.No.223 of 2019 in S.C.No.69 of 2017 on the file of Principal Sessions Judge, Namakkal.

For Petitioners : Mr.R.Marudhachalamurthy

For Respondent : Mr.C.Raghavan
Government Advocate (Crl.Side)

O R D E R

This petition has been filed challenging the order passed by the Court below allowing the petition filed under Section 311 of Cr.P.C. to send summon to LW-11 and LW-15 for examination on the side of the prosecution .

2. The learned Counsel for the petitioner submitted that the prosecution examined PW-1 to PW-10 and they were also cross examined by the petitioner and the petitioner was also questioned under Section 313 of Cr.P.C. Thereafter, the case was transferred from the Assistant Sessions Court, Tiruchengodu to the file of the Principal Sessions Judge, Namakkal. The witnesses on both sides were closed and the case was at the stage of final arguments. At this stage, the prosecution filed an application under Section 311 of Cr.P.C. seeking to examine LW-11 and LW-15.

3. The learned Counsel for the petitioner submitted that the application was vehemently opposed by the petitioner by filing a counter and according to the learned Counsel for the

prosecution and the same should not be permitted. In order to substantiate his submissions, the learned Counsel for the petitioner relied upon the Judgement reported in 2018-2-LW (Cr1) 721 (Gayes Vs. State)

4. The learned Government Advocate appearing on behalf of the respondent police submitted that the witnesses who were sought to be examined by the prosecution are already shown as a witness in the list of witnesses and therefore, the petitioner cannot be heard to have been taken by surprise. The learned Counsel submitted that the Court below has exercised its jurisdiction under Section 311 of Cr.P.C. by giving cogent reasons and there is no ground for interfering with the order of the Court below. The learned Counsel further submitted that the examination of the further witnesses is required to enable the prosecution to prove its case and to enable the trial Court to arrive at a just decision.

5. This Court carefully considered the submissions made on either side and also the materials placed on record. The prosecution has sought for examining LW-15 who is a Judicial Magistrate, who is said to have conducted the ID Parade. This practice of summoning Judges / Judicial Magistrate as witness, has been deprecated by this Court repeatedly and it will be relevant to rely upon the judgement of this Court in reported in (2019) 1 MLJ (Cr1) 669 (K.Sathish Kumar Vs. State). It will be relevant to note that Section 121 of the Evidence Act specifically provides protection for the Judges / Magistrate from being unnecessarily exposed as witness before a Court.

6. In this view of the matter, this Court is of the considered view that there is no requirement to examine LW-15.

7. Insofar as LW-11 is concerned who is the Village Administrative Officer, this witness was already shown in the list of witnesses and he was not examined by the prosecution on the earlier occasion. Now the prosecution wants to examine the witness and the Court below has rightly allowed the petition mainly on the ground that the prosecution has to be given sufficient opportunity to prove its case and his evidence is necessary for coming to a just decision.

8. Even if the prosecution evidence is closed, it is still open for the prosecution to invoke the powers of the Court under Section 311 of Cr.P.C. by examining any witness and if the Court is of the opinion that the examination of such a witness is essential for it to arrive at a just decision, it is the duty of the Court to summon and examine such person. A very wide discretion is given to the trial Court in this regard.

9. This Court is not able to agree with the learned Counsel for the petitioner that the prosecution is trying to fill up the lacuna by examining witnesses after the evidence has been closed. The witness who is sought to be examined is already shown in the list of witnesses and therefore, it cannot be said that the petitioner has been taken by surprise. That apart, the petitioner will still have an opportunity to cross examine the witness and therefore, it cannot be said that the petitioner has lost any valuable right in the prosecution examining LW-11.

10. This Court does not find any illegality or infirmity in the order passed by the Court below and there are no grounds to interfere with the same. It goes without saying that the petitioner will be given sufficient opportunity to cross examine the witness examined by the prosecution.

11. In the result this Criminal Original Petition is partly allowed to the extent indicated above. Consequently, the connected miscellaneous petition is also closed.

12. The Court below is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

ksa-2/drl
To

1. The Principal Sessions Judge,
Namakkal.

2. The Inspector of Police
Komarapalayam Police Station,
Komarapalayam,
Namakkal District.

2. The Public Prosecutor, High Court, Chennai.

+1cc to Mr. R. Marudhachalamurthy, Advocate SR.No. 44803

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and

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A.SK (21/06/2019)