

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P.No.10297 of 2019
& CrI.MP.No.5336 of 2019

T.K.Vengadasubramaniam

... Petitioner/Accused

Vs

State of Tamilnadu
Represented by
The Deputy Superintendent of Police
Vigilance & Anti-Corruption
Dharmapuri.

... Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C to call for the records in CrI.MP.No.244 of 2019 in Spl.C.C.No.4 of 2012 on the file of the learned Chief Judicial Magistrate, Dharmapuri and set aside the same.

For Petitioner : Subramanian.S

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

O R D E R

The Criminal Original Petition has been filed seeking to set aside the order passed by the learned Chief Judicial Magistrate, Dharmapuri, in CrI.MP.No.244 of 2019 in Spl.C.C.No.4 of 2012 dated 02.04.2019, dismissing the petition filed under Section 311 Cr.P.C., to recall the witnesses P.W.1, 3, 7 to 9, 18 and 19.

2.The petitioner had filed the petition under Section 311 Cr.P.C., seeking to recall the witnesses P.W.1, 3, 7 to 9, 18 and 19. He had stated that due to unavoidable circumstances, the petitioner was unable to cross examine the witnesses on the day of their examination in chief. The respondent had filed counter stating that the petitioner had not given sufficient reasons for recalling the above witnesses. The trial Court finding that the witnesses P.W.1 has been examined in chief on 06.05.2015, P.W.3 examined in chief on 12.06.2018, P.W.7 to 9 examined in chief on 11.10.2018, P.W.18 examined in chief on

14.02.2019 and P.W.19 examined in chief on 15.03.2019 and finding that the petition having been filed when the matter was posted for questioning under Section 313 Cr.P.C., had dismissed the petition in consonance with the mandate of the decision of the Hon'ble Apex Court in Vinod Kumar Vs. State of Punjab reported in AIR 2015 SC 1206.

3.The learned counsel for the petitioner would submit that though there had been certain lapses on the side of the petitioner in not cross examining the witnesses on the day of their examination in chief, the cross examination of the witnesses are crucial and the non cross examination of the above witnesses have a great bearing and essential to arrive at a just decision in the case and that if the petitioner is not allowed to recall and cross examine the witnesses, it will amount to a case of no defence, resulting in great prejudice to the petitioner/accused. He would submit that though the trial has been commenced on 06.05.2015, P.W.19 was examined by the prosecution only on 15.03.2019, almost after a period of four years and that out of the total 19 witnesses, the petitioner has cross examined the remaining witnesses on the same day of their examination in chief. He would further submit that the petitioner is facing serious charges of offences under the Prevention of Corruption Act and that in expedient interest of justice and in order to give a chance for fair trial, the petitioner may be granted permission to recall the witnesses and cross examine them on imposition of terms and costs.

4.The learned Additional Public Prosecutor would submit that P.W.1 is the District Collector, who had accorded sanction. P.W.3 is the accompanying witness to the trap. P.W.7 to 9 are official witnesses and P.W.18 is the Trap Laying Officer. P.W.19 is the Investigating Officer. He would further submit that the witnesses P.W.7 to 9 have retired from service. The learned Additional Public Prosecutor would further submit that the learned trial Judge, finding that no reasonable explanation has been stated by the petitioner for non examination of the witnesses on the day of their examination in chief had rightly dismissed the petition.

5.Heard both sides and perused the materials available on record.

6.Though, most of the witnesses have been examined in chief, as early as from 2015 to 2018, the petitioner has not cross examined the witnesses on the same day and also not immediately thereafter, thereby the trial Court following the mandate of the decision of the Hon'ble Apex Court in Vinod Kumar Vs. State of Punjab reported in AIR 2015 SC 1206 has rightly dismissed the petition.

7.I do not find any infirmity in the order passed by the learned trial Judge. The learned Trial Judge had rightly dismissed the petition following the mandate of the decision cited above. However, this Court is of the opinion that the cross examination of the above witnesses have a crucial bearing in the case and therefore in the expedient interest of justice and fair trial, the petitioner shall be given an opportunity to cross examine the witnesses on imposition of costs and terms.

8. This Court enquired the learned Additional Public Prosecutor whether the respondent would be able to produce the witnesses for cross examination. The learned Additional Public Prosecutor on instructions from the respondent would submit that depending upon the convenience of the trial Court and on the date fixed by the Trial Court, the respondent would be able to produce the witnesses before the trial Court for cross examination. He would further submit that a direction may be issued to the trial Court to complete the process within a specified period.

9.In order to give one opportunity to the petitioner, the trial Court is directed to recall the witnesses on the following conditions.

(i) the petitioner shall pay cost of Rs.1,000/- each to the witnesses P.W.3, 7, 8, 9 and 19.

(ii) Further an amount of Rs.5,000/- shall be paid by the petitioner to the District Legal Services Authority Dharmapuri District and the receipt should be furnished before the trial Court on the next hearing date.

10.The trial Court shall take steps to summon all the witnesses at the earliest, preferably within a period of two weeks from the next hearing date. Further, the petitioner is directed to file an affidavit of undertaking before the trial Court that he will cross examine the witnesses on the day of their appearance before the trial Court without fail.

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

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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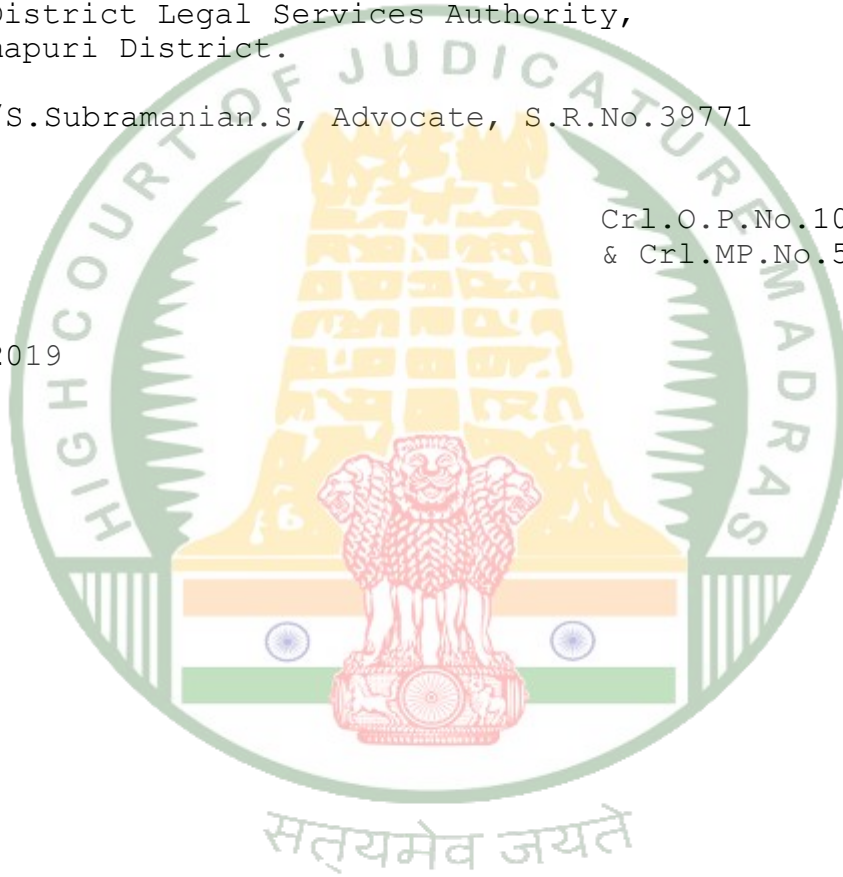
To

1. The Chief Judicial Magistrate,
Dharmapuri.
2. The Deputy Superintendent of Police
Vigilance & Anti-Corruption
Dharmapuri.
3. The Additional Public Prosecutor
High Court of Madras.
4. The District Legal Services Authority,
Dharmapuri District.

+1cc to M/S.Subramanian.S, Advocate, S.R.No.39771

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RSY(CO)
CS/27/04/2019



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