

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 10.06.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.OP.No.11904/2019

M.N.Sumathi

..Petitioner/Accused

Vs

State represented by

The Deputy Superintendent of Police

Vigilance and Anti Corruption

Erode District.

[Crime No.4/AC/2007/Erode]

..Respondent

Prayer:- Petition filed under section 482 Cr.P.C., to call for the records and to set aside the order dated 14.03.2019 made in CMP.No.683/2018 in Special CC.No.05/2015 on the file of the Court of the Chief Judicial Magistrate at Tiruppur.

For Petitioner : Mr.C.E.Pratap

For Respondent : Mr.K.Prabakar, APP

ORDER

This petition is filed seeking to set aside the order dated 14.03.2019 made in CMP.No.683/2018 in Special CC.No.05/2015 on the file of the Court of the Chief Judicial Magistrate at Tiruppur, wherein, the learned Trial Judge dismissed the petition filed under section 311 Cr.P.C., to recall the witnesses, viz., P.Ws.2, 6 and 7 for further cross-examination and P.Ws.10, 12, 13 and 14 respectively for cross-examination.

2 The petitioner is facing trial in the above Calendar Case for the offences under sections 120-B, 167, 409, 465, 467, 468, 471, 474, 477-A IPC read with section 13[2] read with 13[1][c] and 13[1], 13[1][d] of the Prevention of Corruption Act, 1988.

3 The learned counsel for the petitioner would submit that the petitioner is the sole accused facing trial for the commission of the above said offences in Special CC.No.5/2015. He would submit that due to non-availability of

certain documents, the petitioner was not able to cross-examine P.Ws.2, 6 and 7 effectively and he has not cross-examined P.Ws.10, 12, 13 and 14, thereby filed a petition u/s.311 Cr.P.C., to recall P.Ws.2, 6 and 7, who were cross-examined on 16.08.2012 and 21.06.2013 respectively and also to recall P.Ws.10, 12, 13 and 14 who were examined in Chief on 21.11.2013. Learned counsel would further submit that the Trial Court, without taking into consideration the need for recalling the witnesses, had dismissed the petition on 14.03.2019, following the judgment of the Hon'ble Apex Court in Vinoth Kumar Vs. State of Punjab reported in 2015 [2] SCC [Cr.] 226 and thereby, the petitioner would pray that the said order of the Trial Court may be set aside and the petitioner may be permitted to recall the above witnesses for cross-examination.

4 Per contra, the learned Additional Public Prosecutor appearing for the respondent that P.W.2 was examined in chief on 16.03.2012 and cross-examined on 16.08.2012 ; P.Ws.6 and 7 were examined in chief on 18.07.2012 and were cross-examined on 21.06.2018. He would further submit that P.Ws.10, 12 and 13 were examined in chief on 21.11.2013 and that P.W.14 was not at all examined. The learned Additional Public Prosecutor would submit that the petitioner did not take steps to cross-examine them till date only with an oblique motive to protract the trial. He submitted that the learned Trial Judge, taking into consideration the dictum laid down by the Hon'ble Supreme Court of India in Vinoth Kumar's case [cited supra], reported in 2016 [2] L.W [Cri.] 340, had rightly dismissed the application/petition filed u/s.311 Cr.P.C., and no sound reasoning has been given by the petitioner in the petition seeking to recall the witnesses and prays for dismissal of this criminal original petition.

5 At this juncture, the learned counsel for the petitioner would submit that he is restricting his claim only to P.Ws.10, 12, 13 and 14 who have not been cross-examined so far. Learned Additional Public Prosecutor would submit that the case stands posted on 11.07.2019 for trial and that P.Ws.10, 13 and 14 are official witnesses and P.W.12 is a private party and on instructions from the respondent, would submit that other than P.W.12, all the other witnesses can be produced for cross-examination and that, based on the date fixed by the Trial Court, the respondent will be able to produce the witnesses for their appearance, on condition that the petitioner agrees to cross-examine them on the same day of their appearance before the Trial Court, without taking any further adjournment.

6 Learned counsel for the petitioner would submit that he undertakes to cross-examine the witnesses on the date of their appearance before the Trial Court and he would also

undertake that he will cross-examine the remaining witnesses on the same day of their examination in chief.

7 I have carefully considered the rival submissions and also gone through the materials placed.

8 Though I do not find any infirmity in the order passed by the Trial Court, taking into consideration, the mitigating circumstances, I am inclined to pass the following order.

9 The Criminal Original Petition is partly allowed, granting permission to the petitioner to re-call P.Ws.10, 13 and 14 on condition that the said witnesses shall be cross-examined on the day of their appearance before the Trial Court without fail. The petitioner shall also cross-examine the remaining witnesses on the date of examination in chief. This Court also imposes cost of Rs.3,000/- [Rupees Three Thousand Only] to be paid before the Trial Court and the Trial Court shall disburse the amount to P.Ws.10, 13 and 14 equally on their date of cross-examination.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Chief Judicial Magistrate,
Tiruppur.
2. The Deputy Superintendent of Police
Vigilance and Anti Corruption
Erode District.

3. The Public Prosecutor
High Court, Chennai.

+1 cc to M/s.C.E.Pratap, Advocate, S.R.No.45989

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CP(CO)
SSM(10/06/2019).