

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM:

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

Cr1.O.P.No.11625 of 2019

Ramesh

... Petitioner

/Vs/

State by:

The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Erode District.

Cr.No.1/AC/2011/ER

... Respondent

PRAYER: Criminal Original Petition filed under sections 482 of the Criminal Procedure Code, to set aside the order passed in Cr1.M.P.No.2941 of 2019 in Spl.C.C.No.23 of 2015 dated 16.04.2019 on the file of the learned Chief Judicial Magistrate/Special Judge, Erode and recall the witnesses PWs.2, 3, 4, 7 and 9.

For Petitioners : Mr.C.Ramkumar

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

O R D E R

This Original Petition has been filed seeking to set aside the order passed by the learned Chief Judicial Magistrate/Special Judge, Erode in Cr.M.P.No.2941 of 2019 in Spl.C.C.No.23 of 2015 dated 16.04.2019, dismissing the petition filed under Section 311 of Cr.P.C., to recall and cross examine the witnesses PWs.2 to 4, PWs.7 and 9.

2. The petitioner is the sole accused, facing trial for the offences under Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act in Spl.C.C.No.23 of 2015 on the file of the learned Chief Judicial Magistrate/Special Judge, Erode. During the course of the trial, the petitioner had not cross examined PWs.2 to 4, PW.7 and PW.9, thereby, petition had been filed seeking to recall and cross examine the witnesses on the ground that due to non availability of Adangal extract.

3. The respondent had filed a counter stating that the petitioner did not choose to cross examine the witnesses on the day of their examination in chief and that no specific reason had been assailed for recalling the witnesses and thereby, sought for dismissal of the petition.

4. The learned Trial judge, after taking into consideration under which circumstances the petition had been filed, dismissed the petition to recall the witnesses.

5. The learned counsel appearing for the petitioner would submit that though there are serious lapses on the side of the petitioner/accused in not cross examining the witnesses on the day of their examination in chief, non cross examination of the witnesses would amount to a case of no defence and would be detrimental to the petitioner. He would further submit that though the petitioner had sought for recalling PWs.2 to 4, PW.7 and PW.9, he is now restricting his claim in respect of PW2. PW.7 and PW.9 alone. He would further submit that PW.2/P.G.Sampathkumar is the de-facto complainant, PW.7/Ramesh is the Junior Engineer, TNEB, (O & M), accompanied official witness for trap and PW.9/Maheswari is the wife of PW.2. He would also submit that the cross examination of the witnesses is very much essential and relevant to arrive at a just decision in this case. He would further submit that if the petitioner is not allowed to recall and cross examine the witnesses PW.2, PW.7 and PW.9, it will amount to a case of no defence, resulting in great prejudice to the petitioner/accused. He would further submit that in the expedient interest of justice, the trial Court may be directed to recall the witnesses PW.2, PW.7 and PW.9 and the petitioner may be permitted to cross examine them on imposition of costs and terms.

6. The learned Additional Public Prosecutor would submit that the trial Court, finding that the petitioner had purposely and wilfully evaded from cross examining the witnesses on the day of their examination in chief and also finding that the attitude of the petitioner is lethargic, had rightly dismissed the petition. He would further submit that the petitioner cannot be permitted to take advantage of his fault and seek to recall the witnesses at the fag end of the trial and would submit that the case stands posted on 02.05.2019 for questioning the accused under Section 313 Cr.P.C.

7. Heard both sides.

8. I have carefully and consciously gone through the materials on record. The trial Court has dismissed the petition following the mandate of the decision of the Hon'ble Apex Court reported in AIR 2015 SC 1206 (Vinothkumar Vs.State of Punjab) and also following other decisions.

9. The trial Court had dismissed the petition, stating reasons in detail for not allowing recall of the witnesses PW.2, PW.7 and PW.9. The learned Trial Judge had rightly dismissed the petition following the mandate of the decision cited above. I do not find any infirmity in the order passed by the trial Court. However, this Court is of the opinion that non cross examination of the witnesses PW.2, PW.7 and PW.9 has a great bearing in deciding the case of the petitioner and that if they are not recalled and allowed to be cross examined, it will be a case of no defence thereby, causing prejudice to the petitioner. Further, the petitioner is facing trial for grave charges of corruption under Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, wherein there is statutory presumption against him under Section 20 of the Act and thereby, this Court is of the opinion that in the expedient interest of justice, the petitioner shall be given an opportunity to recall and cross examine the witnesses PW.2, PW.7 and PW.9 on imposition of costs and terms.

10. This Court enquired the respondent through the learned Additional Public Prosecutor with regard to the availability of the witnesses. The learned Additional Public Prosecutor on instructions would submit that the respondent would be able to produce the witnesses PW.2, PW.7 and PW.9 before the trial Court for cross examination on the date fixed by the trial Court and he would submit that the case stands posted on 02.05.2019 at the stage of questioning under Section 313 Cr.P.C.

11. In the expedient interest of justice and order to give one more opportunity to the petitioner, the Trial Court is directed to fix a date and recall the witnesses PW.2, PW.7 and PW.9 for their appearance on the following conditions.

(i) the petitioner shall pay cost of Rs.2,000/- each to the witnesses PW.2, PW.7, and PW.9 and an amount of Rs.4,000/- shall be paid by the petitioner to the District Legal Services Authority, Erode District and the receipt shall be furnished before the trial Court.

(ii) 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 taking any further adjournment.

12. With the above observations, the Criminal Original Petition stands disposed of.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kv

To

1. The Chief Judicial Magistrate/Special Judge, Erode.
2. The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Erode District.
Cr.No.1/AC/2011/ER
3. The Public Prosecutor,
High Court of Madras.
4. The District Legal Service Authority,
Erode District.

+1cc to Mr.C.Ramkumar, Advocate, S.R.No.41186

Cr1.O.P.No.11625 of 2019

SPD(CO)
CS/27/04/2019

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