

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.05.2019
PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.RC.No.442 of 2019
and
Crl.M.P.No.6644 of 2019

T.Russel Raj ... Petitioner/Accused

Vs.

Inspector of Police,
Central Crime Branch,
XI Team, Egmore,
Chennai - 600 008.

... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed by the learned Metropolitan Magistrate in Crl.M.P.No.6962 of 2018 dated 25.03.2019 in C.C.No.16429 of 2003 on the file of the CCB & CBCID Metropolitan Magistrate Court, Egmore.

For Petitioner : Mr.V.K.Sathiamurthy

For Respondent : M/s.S.Thankira
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision Petition is filed to set aside the order passed by the learned Metropolitan Magistrate in Crl.M.P.No.6962 of 2018 dated 25.03.2019 in C.C.No.16429 of 2003 on the file of the CCB & CBCID Metropolitan Magistrate Court, Egmore.

2.By consent of both the parties, this matter is taken up for final hearing at the admission stage itself.

3.The petitioner is an accused in C.C.No.16429 of 20003 on the file of the CCB & CBCID Metropolitan Magistrate Court, Egmore. He has filed this Criminal Revision Case to set aside the dismissal order dated 25.03.2019 in Crl.M.P.No.6962 of 2018 passed by the trial Court, which was filed under Section 243(2) of Cr.P.C. to recall PW7 and PW11 for the purpose of cross

examination. In view of the evidence of DW1 on 29.11.2018 and marking of Ex.D1 letter dated 08.03.2001 confirming that the petitioner was an agent of LIC.

4.The brief facts of the case is that the defacto complainant had lodged a complaint to the respondent that the petitioner had represented himself as an agent of LIC and induced the defacto complainant to join as a policy holder through him and under pretext of making her a subscriber in the policy to the value of Rs.1.5 lakhs. An yearly premium of Rs.12,084/- was collected from the year 1995 to 2001 by giving bogus monthly receipts as genuine. When the defacto complainant approached the LIC to avail loan based on the policy, she came to know that no such policy was in her name and Policy No.711082381 was that of one Gnanam. Hence, the complaint.

5.After investigation, the respondent registered a case and cited 11 witnesses along with documents and filed the charge sheet. In this case, PW7 and PW11 are the Investigating Officers. PW7 is the Inspector of Police, who registered the case and investigated. PW11 is the Inspector of Police, who had examined and recorded the statement of the witnesses and one of the witness is the Scientific Officer, one Mr.Kasi, who had examined the documents. PW7 is the Inspector of Police, who received the complaint, arrested the accused and produced him for remand, through him Ex.P15, FIR has been marked. Both the Investigating Officers have carried out the investigation. PW11 on conclusion of investigation had filed the final report.

6.The contention of the petitioner is that DW1 one Govindarajan, Manager, Customer Relationship was examined on 29.11.2018 and through him Ex.D1 had been marked, wherein he had categorically stated that the petitioner has been appointed as an agent of LIC. Further he categorically stated that though he was the Manager of LIC during the relevant period he was not examined by the respondent. Hence, it is imperative to summon PW7 and PW11 for the purpose of confronting material particulars and it is also submitted that PW7 and PW11 has not been cross examined earlier and their evidence stands unchallenged. The omission and contradiction and the manner of investigation has to be questioned only by way of cross examination of these witnesses, otherwise great prejudice would be caused to the petitioner.

7.The learned Government Advocate (Crl. Side) submits that in this case, the prosecution examined PW1 to PW11 and DW1 also examined. The petitioner was questioned under Section 313 Cr.P.C. on 18.09.2013. Thereafter, after a lapse of five years, the petition to recall the prosecution witnesses under Section 311 of Cr.P.C. in Crl.M.P.No.291 of 2018 was filed and it was

dismissed by the Lower Court on 26.09.2018. Challenging the same, petitioner approached this Court in CrI.O.P.No.25744 of 2018 and this Court by an order dated 02.01.2018 confirmed the order of the trial Court and hence, the petitioner cannot now seek to recall PW7 and PW11.

8.The learned counsel for the petitioner submits that in this case it is to be seen that the charge sheet came to be filed on 04.03.2003, petitioner is regularly appearing before the trial Court. Due to sudden illness, the petitioner cannot attend the trial Court and could not inform his counsel about the sudden illness and hence, Non-Bailable Warrant was issued. Thereafter, the petitioner surrendered voluntarily and recalled the Non-Bailable Warrant. Further the prosecution had produced the witness belatedly after lapse of nine to ten years and no reason had been given for the inordinate delay in producing the witnesses. Further the CCB cases were transferred to the file of the CCB CBCID Metropolitan Magistrate Court, a new special Court, which was formed exclusively to try the cases of CCB. The chief examination was earlier done before formation of exclusive Court. After the formation of the Special Court all the cases investigated by the CCB and CBCID and pending in other Courts were transferred to the file of this Court and hence, delay had taken place for the cases to be arranged and regularized and thereafter only the trial in the cases commenced and hence, the major part of the delay was due to prosecution and due to administrative reason and the petitioner is no way connected with the delay.

9.Further the learned counsel for the petitioner submitted that as per proviso to Section 243 (2) Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

10.The learned counsel appearing for the petitioner further submitted that the petitioner should be given an opportunity for rebutting the evidence. Fair trial includes fair opportunity to be given to the petitioner/accused as per law, which could not be deprived and it is a fundamental right.

11.The learned counsel further contended that the reason given by the Lower Court that the case is pending from the year 2003 and the petitioner came to know about the new set of facts after the examination of DW1 on 29.11.2018 is not proper.

12.The main thrust of the case is that the petitioner is not an agent of LIC and had collected money from the defacto

complainant claiming to be an agent. The evidence of DW1 is that the petitioner is an LIC agent. Hence, the contention of the petitioner that this vital aspect would go to the root of the case cannot be brushed aside. Further PW7 and PW11 are the Investigating Officers, who had registered the case, arrested the accused and collected documents, examined the witnesses and recorded statements. Omission and contradiction have to be necessarily put to these witnesses alone. This part of cross examination cannot be substituted with any other witnesses and the purpose of cross examination would be defeated. Further the evidence is complete only on cross-examination of witnesses as it could be seen from the section 137 of the Evidence Act.

13. In this case, admittedly, new facts have come into after examination of DW1, which is a subsequent development. Further, PW7 and PW11 had not been cross examined earlier. As per proviso to 243(2), the petitioner is entitled to cross examine PW7 and PW11. The delay cannot be a reason to deny the petitioner's fundamental right, otherwise, the trial itself would become a farce.

14. The learned counsel for the petitioner relied upon the following decisions:

1) T.Nagappa Vs. Y.R.Muralidhar reported in (2008) 5 Supreme Court Cases 633;

2) TTV Dhinakaran Vs. Assistant Director reported in 2018 CCR MAD 1 489; 2018 LW CRL 1 194; 2018 MLJ CRL 1 445; and

3) Mrs.Kalyani Baskar Vs. Mrs.M.S.Sampoornam reported in 2006 SCALE 13 459; 2007 JT 177; 2006 AIOL 2087; 2007 COMPCAS 135 197; 2007 AIC SC 50 381; 2007 SCC CRI 1 577; 2007 ANJ SC 1 308; 2007 SCC 2 258.

15. In the case of T.Nagappa Vs. Y.R.Muralidhar cited supra wherein it has stated that 'Fair trial' includes fair and proper opportunities allowed by law to prove innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them."

16. It is submitted that PW7 and PW11 are police officials and they are bound to offer themselves to be examined during trial. In this case, trial is yet to be completed, more so, when they are the Investigating Officers.

17. The learned counsel for the petitioner undertakes that there would be no delay and the petitioner would cross examine

the witnesses on the day when the witnesses are produced/appeared, without seeking any further adjournments and the petitioner would not be a cause for delay in any manner.

18.Considering the submissions and the undertaking given by the petitioner, this Court set aside the order passed by the learned Metropolitan Magistrate in CrI.M.P.No.6962 of 2018 dated 25.03.2019 in C.C.No.16429 of 2003 and the Lower Court is directed to issue summons to PW7 and PW11 for the purpose of cross examination by the petitioner, within a stipulated time and the entire process to be completed within a period of one month from the date of receipt of a copy of this order.

18.Accordingly, this Criminal Revision Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Metropolitan Magistrate
CCB & CBCID Metropolitan Magistrate Court,
Egmore.

2.The Inspector of Police,
Central Crime Branch,
XI Team, Egmore,
Chennai - 600 008.

3.The Public Prosecutor,
High Court,
Madra.

+2ccs to Mr.C.Rajan, Advocate sr.44595

CrI.RC.No.442 of 2019

sai(co)
nr 08/07/2019