

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 06.06.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.OP.No.13096/2019 & CrI.MP.Nos.6672 & 6673/2019

K.Srinivasan

...Petitioner

Vs

State of Tamil Nadu rep. by  
Inspector of Police  
Vigilance and Anti Corruption  
Cuddalore.

...Respondent

Prayer:- Petition filed under section 482 Cr.P.C., to set aside the order in Cr.MP.No.135/2019 in Special Case No.9/2010 on the file of the learned Chief Judicial Magistrate/Special Judge at Cuddalore dated 26.04.2019.

For Petitioner : Mr.V.Krishnamurthy

For RR 1 and 3 : Mr.K.Prabakar, APP

ORDER

This petition has been filed seeking to set aside the order in Cr.MP.No.135/2019 in Special Case No.9/2010 on the file of the learned Chief Judicial Magistrate/Special Judge at Cuddalore dated 26.04.2019, wherein the learned Trial Judge dismissed the petition to recall P.W.15-Investigating Officer.

2 The petitioner is the sole accused in Spl.Case No.9/2010, pending trial on the file of the Trial Court for the offences under the provisions of the Prevention of Corruption Act, 1988.

3 The learned counsel for the petitioner would submit that P.W.15-Investigating Officer was examined in chief on 29.11.2018 and on the request of the learned counsel for the petitioner/accused, the case was deferred for cross-examination and thereafter, the case was posted on 06.12.2018, 20.12.2018, 10.01.2019, 24.01.2019., 11.02.2019, 19.02.2019 and 28.02.2019 respectively. P.W.15-Investigating Officer, did not attend the Court below from 06.12.2018 to 19.02.2019 for about six hearings. On 28.02.2019, the learned counsel for the

petitioner/accused could not attend the Court as he was engaged otherwise and on that day, P.W.15-Investigating Officer was present in the Court. Since the learned counsel for the accused had not cross-examined P.W.15-Investigating Officer, the Trial Court has closed the evidence and posted the matter on 07.03.2019 for questioning the petitioner/accused u/s.313 Cr.P.C. On 07.03.2019, the petitioner/accused had filed a petition under section 311 Cr.P.C., to recall P.W.15-Investigating Officer for cross-examination and the Trial Court, without taking into consideration, the absence of the Investigating Officer [PW15] on the earlier hearings, had dismissed the petition to recall him. Learned counsel would further submit that the Investigating Officer [PW15] did not appear before the Court below for about six hearings and that the learned counsel was ready to cross-examine him and on the particular day, since due to work pressure, the learned counsel was engaged before the other Court, he was unable to cross-examine P.W.15-Investigating Officer and the Trial Court, without taking into consideration, the absence of the witness on the earlier hearing dates, had dismissed the petition vide order dated 26.04.2019, which is impugned herein. He would also submit that it is a case of trap and there is a presumption u/s.20 of the Act against the petitioner/accused and if the petitioner/accused is not allowed to recall and cross examine P.W.15-Investigating Officer, grave prejudice will be caused to the petitioner/accused and he would seek that the impugned order may be set aside and the petitioner/accused be permitted to cross examine P.W.15-Investigating Officer.

4 Per contra, the learned Additional Public Prosecutor appearing for the State would submit that at the instance of the petitioner to defer cross examination, the cross examination of P.W.15-Investigating Officer, was posted to some other date. The petitioner/accused and his counsel ought to have been vigilant and should have cross-examined the witness on the date of his appearance ; whereas they failed to cross-examine him on the date of his appearance and the Trial Judge had rightly dismissed the petition filed to recall and cross-examine P.W.15-Investigating Officer and prays for dismissal of this petition.

5 Heard both sides and perused the materials including the impugned order.

6 It is seen from the order that though the case had been posted to 06.12.2018 for cross examination of P.W.15-Investigating Officer, the witness had not appeared for about six hearings and that, only on 28.02.2019, P.W.15 had appeared and unfortunately, since the learned counsel for the petitioner/accused was engaged in other Court, he was unable to

cross-examine the witness. This is a case of trap and the presumption u/s.20 of the Act is against the petitioner/accused. This Court is of the opinion that if the Investigating Officer [PW15] is not recalled and permitted to be cross examined, the same would cause prejudice to the petitioner/accused. Further, it is seen from the records that P.W.15-Investigating Officer, had not appeared on earlier six occasions and that he was present only on 28.02.2019.

7 This Court enquired the learned Additional Public Prosecutor about the stage of the case and he would submit that the case stands posted to 07.06.2019 for examination of the defence witnesses. However, he would fairly submit that P.W.15-Investigating Officer is prepared to appear before the Trial Court on 14.06.2019 and on that day, he may be cross examined.

8 In view of the above, the criminal original petition is allowed and the order in Cr.MP.No.135/2019 in Special Case No.9/2010 on the file of the learned Chief Judicial Magistrate/Special Judge at Cuddalore dated 26.04.2019, is hereby set aside and the petitioner/accused shall positively cross-examine P.W.15-Investigating Officer on the day of his appearance. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(J)

//True Copy//

AP

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate/Special Judge at Cuddalore.

2. Inspector of Police, Vigilance and Anti Corruption  
Cuddalore.

3. The Public Prosecutor  
High Court, Madras.

+1 cc to Mr.V.Krishnamoorthy, Advocate, S.R.No.45190

Cr1.OP.No.13096/2019

(CO)  
SSM(19/06/2019)