

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.OP.No.16547 of 2019
CrI.MP.No.8320 of 2019

Krishnan
Petitioner

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Vs

State Represented by
Inspector of Police,
Vigilance and Anti-Corruption,
Dharmapuri
Respondent

Prayer : This Criminal Original Petition is filed, under Section 482 of Cr.PC., to set aside the docket order, dated 15.05.2019, made in CrI.MP.No.406 of 2019 in Special CC.No.11 of 2010 by the Chief Judicial Magistrate Court, Dharmapuri and to allow this Criminal Original Petition.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr. K.Prabakar, APP

ORDER

- 1.This Criminal Original Petition has been filed, seeking to set aside the docket order, dated 15.05.2019, made in CrI.MP.No.406 of 2019 in Special CC.No.11 of 2010 by the Chief Judicial Magistrate Court, Dharmapuri, returning the said petition filed under Section 311 of Cr.P.C for recalling PW.8 and cross examining him.
- 2.The Petitioner/Accused had filed CrI.MP.No.406 of 2019 in Special CC.No.11 of 2010, under Section 311 of Cr.P.C to recall PW.8, C.Mani, Assistant Director, Seri Culture Department, Dharmapuri and to cross examine him. It had been averred in the petition that the trap was conducted in P.W.8's Office, in his presence and thereby he knows the merits and demerits of the case and hence, P.W.8 being a necessary witness the petition had been filed to recall P.W.8 for cross examination. By the impugned order, dated 15.05.2019, the Trial Court had returned the petition, stating that the petition is not maintainable, since the High Court, by its order, dated 20.03.2019 in CrI.O.P No.7374/2019 had directed that on completion of cross examination, the petitioner would argue the case on the next hearing date, without taking further

adjournment. Against the order of return, this present Criminal Original Petition has been filed.

3. This Court heard the learned counsel on either side and perused the materials placed before this Court.
4. Mr. C. Prabakaran, the learned counsel for the petitioner would submit that PW.8 is an important and necessary witness and he being the Assistant Director of Sericulture Department, Dharmapuri is the Head of the Department and since the trap proceedings were conducted in his presence, in his Office, his evidence is very much relevant for deciding the defence of the petitioner and that if PW.8 is not recalled and permitted to be cross examined, it will cause serious prejudice to his case.
5. On the other hand, the learned Additional Public Prosecutor vehemently opposed the case, stating that the petitioner had been very lethargic in his attitude in conducting the trial and that the case is of the year 2010 and that the accused has been charged for offences under Section 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. He would further submit that though the cross examination of the witness had been commenced during 2017, the Petitioner did not cross examine the witnesses and at a later point of time, filed a petition in CrI.M.P.406 of 2019 to recall PWs.2 to 17, before the Trial Court. The trial Court had dismissed the petition to recall and he had approached this Court, by filing Criminal Original Petition in CrI.OP.No.7374/2019, wherein, this Court, after hearing both sides, had passed an order, dated 20.03.2019, permitting the Petitioner to recall PW.2 to PW5, PW.10 and PW.11 alone and that pursuant to the said order, the said witnesses had been recalled and cross examined and at that time of hearing CrI.O.P.No.7374 of 2019 before this Court, the Petitioner had also restricted his prayer for cross examination in respect of PW.2 to PW5, PW.10 and PW.11 alone and thereby, given up PW.8 for recalling and cross examining him.
6. The learned Additional Public Prosecutor would further submit that the present petition, seeking to recall PW.8, is nothing but a dilatory tactics, adopted by the petitioner to delay progress of trial and rendering of judgment in this case. He would submit that the case is now at the stage of defence witness and the case stands posted on 02.07.2019. He would submit that recall of witnesses cannot be done at the whims and fancies of the accused. He would further submit that the petition had been returned by the learned Chief Judicial Magistrate, Dharmapuri as early as on 15.05.2019, but the Petitioner had approached this Court only on 03.06.2019 and after it had been returned by the registry had numbered it with much delay. The conduct of the petitioner would expose

his real intention and attitude and that the petition has been filed only with a view to delay the progress of trial and rendering of judgments.

- 7.A perusal of the records shows that the petitioner had earlier approached this Court in CrI.OP.No.7374/2019, seeking to recall witnesses PW.2 to PW.17 and this Court, after hearing both sides and considering the facts of the case, had permitted the petitioner to recall P.W.2, P.W.3, P.W.4, P.W.5, P.W.10 and P.W.11 alone, on the undertaking of the Petitioner/ accused at that time, the petitioner has given up his claim to recall PW.8. While so, the Petitioner/accused cannot now turn around and seek to recall PW.8, as against his undertaking. Considering the said aspect, the Trial Court had rightly returned the Petition to recall PW.8, by the impugned order. Further, apart from the fact that there are no merits in this Criminal Original Petition. I have consciously perused the documents on record and find that no valid reason or ground has been assigned by the petitioner to recall P.W.8. I do not find any infirmity in the order passed by the Trial Court.
- 8.In the result, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Deputy Registrar(CJ CONF)

//True Copy//

Sub Assistant Registrar

jrs
To:

1. The Chief Judicial Magistrate Court,
Dharmapuri
- 2.The Inspector of Police,
Vigilance and Anti-Corruption,
Dharmapuri
- 3.The Public Prosecutor,
High Court, Madras.

CrI.OP.No.16547 of 2019
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rk (CO)
A.SK(16/07/2019)