

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 13.06.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.OP.No.14997/2019

Sadhasivam
Petitioner/A-14

..

Vs
State of Tamil Nadu rep.by
Inspector of Police
Vigilance and Anti Corruption
Cuddalore.
Respondent/Complainant

Prayer:- Petition filed under section 482 Cr.P.C., to set aside the order dated 15.03.2019 in Crl.MP.No.137/2019 passed by the learned Chief Judicial Magistrate/Special Judge, Cuddalore in Spl.Case No.3/2003 and allow the petitioner to recall the prosecution side witness 22 and witness 44 for cross examination.

For Petitioner : M/s.G.Shankardevi

For Respondent : Mr.K.Prabakar, APP

ORDER

This petition is filed seeking to set aside the order dated 15.03.2019 made in Crl.MP.No.137/2019 in Special Case No.03/2003 on the file of the Court of the Chief Judicial Magistrate / Special Judge, at Cuddalore, wherein, the learned Trial Judge dismissed the petition filed under section 311 Cr.P.C., to recall the witnesses, viz., witnesses 22 and 44, for cross examination.

2 The learned counsel for the petitioner would submit that the petitioner/A-14 had filed a petition u/s.311 Cr.P.C., seeking to summon the witnesses, viz., L.W.22 and L.W.44, for examination. He would submit that the allegation against the petitioner is that he has forged certain documents which have been submitted along with the loan application. Learned counsel would submit that in fact, L.Ws.22 and 44 are the persons who have forged those documents and that unless they

are summoned and that the petitioner is permitted to examine them, serious prejudice will be caused to the petitioner.

3 Per contra, the learned Additional Public Prosecutor appearing for the respondent / State would submit that the occurrence took place in the year 1994 and the cognizance of the case was taken during the year 2003 and the trial commenced on 27.01.2011 and 77 witnesses as P.W.1 to P.W.77 were examined and Exs.1 to 805 were marked by the prosecution and the evidence on the side of the prosecution was closed on 30.10.2018. Thereafter, questioning u/s.313[1][b] Cr.P.C. was completed on 03.12.2018 and excepting A-5, all the other accused have not let in oral evidence. Subsequently, the learned counsel appearing for A-5 withdrew his appearance and A-5 is contesting the case as Party-in-person. A-5 had examined himself as D.W.1 on 18.12.2018 and has marked Exs.D5 to D18 and had requested time for further defence witnesses. On that day, the petitioner/A-14 was called absent and NBW was issued against him. Thereafter, on the petition being filed by the petitioner/A-14, the Warrant was recalled on 31.01.2019. Subsequently, the prosecution has filed an application to recall D.W.1 for cross-examination and it was allowed on 31.01.2019 and D.W.1 was cross-examined by the prosecution on 12.02.2019 and thereafter, the case had been adjourned to 04.03.2019 ; 08.03.2019 and 15.03.2019 respectively for further witnesses on the side of A-5 and much belatedly, at that stage, the application was filed by the petitioner to summon and examine L.W.22 and L.W.44, who are respectively, the Former Collector and Tressury Officer. Learned Additional Public Prosecutor would further submit that though the prosecution had not stated any objection to recall the witnesses, the Trial Court in its wisdom, taking into consideration the stage of the case, had dismissed the petition following the dictum laid down by the Hon'ble Supreme Court of India reported in 2015 [1] MLJ [Cri] 288 [Vinod Kumar Vs. State of Punjab]. He would also submit that though the petition has been dismissed on 15.03.2019, the petitioner/A-14 had not taken steps to file the petition to set aside the order immediately. As on date, much water has flown down below the bridge and that the case has been posted to 14.06.2019 for arguments finally and at this stage, the present petition has been filed before this Court to delay the progress and if the petitioner/A-14 had been vigilant, he would have filed the petition immediately after the dismissal by the Trial Court and it would show the conduct of the petitioner. He would submit that the case is of the year 1994 and that the prosecution itself has dispensed with their examination of L.Ws.22 and 44 and it will be impossible to secure the persons to be examined before the Court at this stage after several years and the present petition has been filed with the only motive for delaying further progress of the trial and rendering

judgment and hence, would pray for dismissal of the petition.

4 I have carefully considered the rival submissions and also consciously perused the order impugned herein.

5 Admittedly, this is a case of the year 1994 and cognizance had been taken during the year 2003. There are totally 15 accused in this case and the petitioner is arrayed as A-14. The prosecution has examined 77 witnesses and marked 805 documents and the evidence on the side of the prosecution had been closed as early as on 30.10.2018 and the questioning u/s.313[1][b] Cr.P.C., had been completed on 03.12.2018. Subsequently, the petitioner/A-14 was absent before the Trial Court and a Non Bailable Warrant was issued against him on 18.12.2018 and it had been recalled on 31.01.2019. Further, on a perusal of the records, it is seen that W.22 and W.44, whom the petitioner/A-14 wants to summon and examine, have not been examined on the side of the prosecution and the Trial Court had found that the petitioner has not offered any proper and plausible explanation in the application as to why the said witnesses have to be recalled and examined on his side. Further, no steps have been taken by the petitioner/A-14 to examine the witnesses 22 and 44 at the earliest point of time. The Trial Court having found that no tenable, proper and plausible explanation has been offered by the petitioner/A-14 for not having taken steps and further, in the absence of any reasons in the petition and finding that the petitioner having been given sufficient opportunity, had neglected to use the opportunities granted to him earlier and that the application has been filed only to drag on / protract the proceedings, had dismissed the petition to summon the witnesses.

6. I do not find any infirmity in the order passed by the Trial Court and the same warrants no interference at the hands of this Court.

7. Accordingly, the criminal original petition is dismissed confirming the order dated 15.03.2019 made in CrI.MP.No.137/2019 passed by the learned Chief Judicial Magistrate/Special Judge, Cuddalore in Spl.Case No.3/2003.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

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

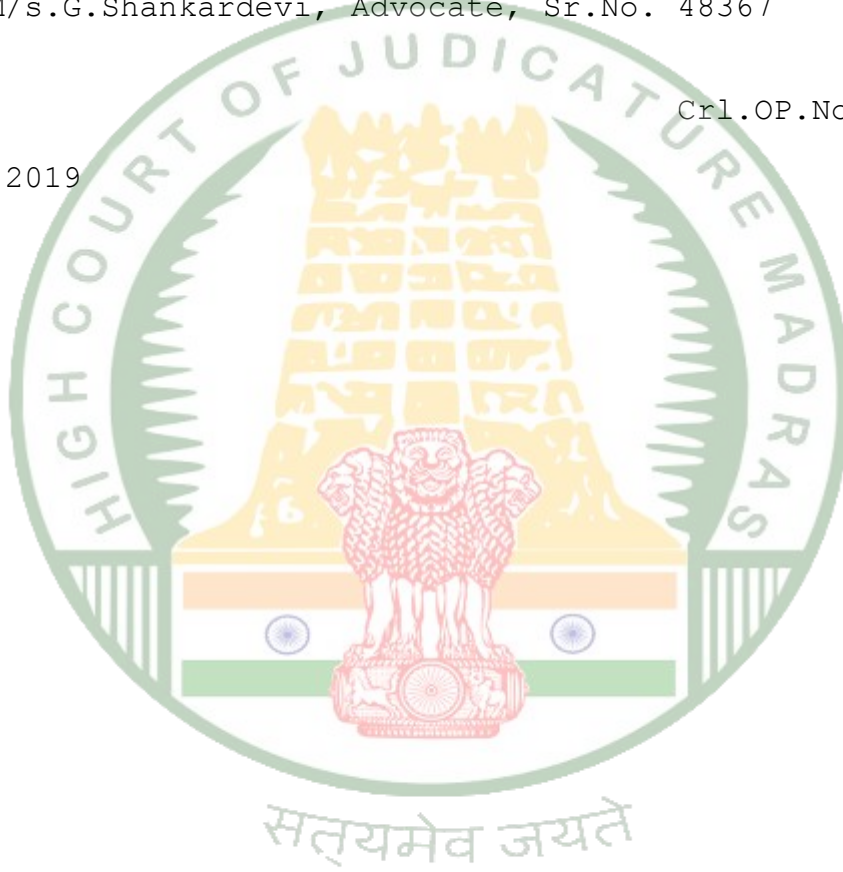
2.The Inspector of Police
Vigilance and Anti Corruption
Cuddalore.

3.The Public Prosecutor
High Court, Chennai.

+1 cc to M/s.G.Shankardevi, Advocate, Sr.No. 48367

Crl.OP.No.14997/2019

NRJK(CO)
CSL/01.07.2019



WEB COPY