

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 07.06.2019  
CORAM  
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH  
Crl.O.P No.14445 of 2019  
and Crl.M.P No.7027 of 2019

Jagadesh

Petitioner

vs.

State by:

Inspector of Police,  
Avinasipalayam Police Station,  
Tiruppur District.  
(Crime No.578 of 2015)

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records made in C.M.P.No.50 of 2018 in S.C.No.69 of 2018 dated 30.01.2019 on the file of the court of the Subordinate Judge, Palladam and set aside the same as illegal.

For Petitioner : Mr.R.Rajasekaran

For Respondent : Mr.C.Raghavan  
Government Advocate

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 of Cr.P.C. to recall PW1 to PW8 for the purpose of cross-examination.

2. It is seen from the records that the petitioner is facing trial before the court below for the offences under Sections 294 (b), 307 and 326 of IPC. When the trial commenced on 25.10.2018 and LW1 to LW8 were produced before the trial Court, the petitioner took a very specific stand that even though he is represented by a counsel, he does not want to be represented by any advocate and he himself will conduct the cross-examination. This was taken into consideration by the trial Court and the petitioner proceeded to cross-examine eight witnesses who were examined by the prosecution. All of a sudden, the petitioner became wiser and he thought that he should take the services of an advocate and therefore filed a petition under Section 311 of Cr.P.C on the ground that he is engaging the services of an advocate and the advocate will have to cross-examine PW1 to PW8.

3. The Court below found that the petitioner, having taken a specific stand, even though he had an advocate assisting him before the Court, cannot be permitted to turn around and take a different stand and the entire exercise has been done only to protract the proceedings.

4. The learned counsel for the petitioner submitted that appointment of an advocate to defend the case of an accused is a fundamental right which is guaranteed under Article 21 of the Constitution of India. The petitioner cannot be deprived on that right. The petitioner is not an advocate and therefore he will have his own limitations while cross-examining the witnesses. Therefore, in order to afford a fair opportunity, the petitioner must be given one last chance to recall PW1 to PW8 for further cross-examination.

5. The learned Government Advocate appearing on behalf of the respondent police submitted that there are absolutely no grounds to interfere with the order passed by the Court below and the petitioner is only attempting to protract the proceedings by filing this petition to recall PW1 to PW8 for further cross-examination.

6. This Court has carefully considered the submission made by the learned counsel for the petitioner and also perused the materials placed on record.

7. The application filed by the petitioner is liable to be dismissed on the preliminary ground that the petitioner did not file this application by stating true facts. The petitioner has proceeded to state in his application that he had not engaged a counsel to conduct his case and therefore he himself had cross-examined PW1 to PW8 and only thereafter with the help of legal aid, a counsel was appointed to defend the petitioner in the case. This pleading goes completely contrary to the finding of the court below which has categorically held that the accused was duly represented by a counsel even at the time when the trial commenced and the accused chose not to have an advocate to defend his case and to cross-examine the witnesses on his own. This finding of fact by the Court below is borne out by records and the Court has given such a finding after taking note of the entries made on 25.10.2018 when the trial commenced.

8. The fundamental right guaranteed to an accused person under Article 21 of the Constitution of India to have a fair trial cannot be misused by an accused person. An accused person who inspite of being represented by a counsel chooses not to continue with the assistance and decides to conduct the case on his own, cannot be permitted to turn around at the fag end of

the proceedings and come up with the plea that he wants the assistance of the advocate and therefore all the witnesses will have to be recalled. This attitude of the accused persons is to be deprecated and it cannot be entertained. If this is entertained, accused persons will start resorting to these tactics and ultimately cases will be kept pending forever before the trial Court. This Court does not want to give any room for the same. The petitioner has to stand or fall based on the initial decision taken by him not to have a counsel to defend his case. Even now if the petitioner wants to engage a counsel, he can do so, however, that will not give him the right to recall all the witnesses who have already been cross-examined by the petitioner.

9. This Court does not find any illegality or infirmity in the order passed by the Court below and there are absolutely no grounds to interfere with the same.

10. In the result this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in S.C.No.69 of 2018 within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssr/jrs

To

1. The Subordinate Judge, Palladam.

2. The Inspector of Police,  
Avinasipalayam Police Station,  
Tiruppur District.

3. The Public Prosecutor,  
High Court of Madras,  
Madras.

+1cc to Mr.R.Rajasekaran, Advocate sr.47071

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nr 12/07/2019