

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.06.2019

CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.14671 of 2019
and
Crl.M.P No.7177 of 2019

1.M.Vellaisamy
2. K.R.Mayalagu

..Petitioners/Accused (1 & 2)

vs.

The Inspector of Police,
Central Crime Branch, Team - I,
Chennai.
(Crime No.237 of 2007)

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 29.11.2018 passed by the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai in C.M.P.No.5129 of 2018 in C.C.No.7005 of 2007.

For Petitioners: Mr.S.Anil Sandeep

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed quashing the order passed by the Court below dismissing the petition filed under Section 311 of Cr.P.C. to recall PW1 to PW3 for the purpose of cross-examination.

2. The petitioners are facing trial before the Court below for the offences under Sections 420, 384 r/w 34 of IPC. In this case the final report was taken in the year 2007. There was no progress in the case and ultimately the trial started only in the year 2012. Four witnesses were examined on the side of the prosecution. PW1 was examined on 26.10.2012, PW2 was examined on 07.02.2013 and PW3 was examined on 26.02.2018. On all those dates the petitioners even though were represented by a counsel chose not to cross-examine these witnesses. Ultimately a petition came to be filed under Section 311 of Cr.P.C., on 03.10.2018 to recall PW1 to PW3 for the purpose of cross-examination. The said petition was dismissed by the Court below on the ground that even though the petitioners were represented

by a counsel right through, there was absolutely no explanation as to why the petitioners waited for such a long time to file a petition to recall the witnesses. The Court below also took into consideration the fact that the case is pending from the year 2007 and the petitioners cannot be allowed to recall the witnesses at their own pleasure and the entire attempt is only to drag on the proceedings.

3. The learned counsel for the petitioners submitted that the petitioners must be given an opportunity to cross-examine the witnesses in the absence of which the petitioners will be deprived of a fair trial and their right to fair trial will be defeated. The learned counsel further submitted that there is a change of counsel for the petitioners and the new counsel realised the fact that PW1 to PW3 were not cross-examined and thereafter, immediately steps were taken to recall the witnesses for cross-examination. The learned counsel submitted that this Court can impose any condition and the same will be complied with by the petitioners and the petitioners will not drag on with the case and will co-operate for the early disposal of the case.

4. The learned counsel for the petitioners in order to substantiate his submissions relied upon the following judgments by the Hon'ble Supreme Court in *Godrej Pacific Tech. Ltd. vs. Computer Joint India Ltd.* [CDJ 2008 SC 1307]; *Hoffman Andreas vs. Inspector of Customs, Amristar* [CDJ 1999 SC 1169]; *Rajaram Prasad Yadav vs. State of Bihar & Another* [CDJ 2013 SC 561]; *Manju Devi vs. State of Rajasthan & Another* [CDJ 2019 SC 502].

5. This case is only a sample of the manner in which the trial is being conducted in the subordinate Courts. Even though Section 309 of Cr.P.C. insists for a day-to-day trial, wherein the accused person is expected to cross-examine the witnesses on the same day they are examined in Chief, It is never followed. Time and again the Hon'ble Supreme Court has reiterated the position of law and in spite of the same, this Court encounters on a daily basis, petitions of this nature where the witnesses are sought to be recalled after long number of years, after they have deposed before the Court during Chief examination. On the one hand it is true that fair trial must be ensured to the accused persons. That does not mean that the accused persons will examine witnesses on their own sweet will and pleasure and the accused persons cannot expect the Courts to wait for them to take a decision as to when they will cross-examine the witnesses. If this practice is encouraged, the proceedings are bound to get delayed and the trial Courts will be clogged with the pending cases.

6. On the one hand, this Court is insisting upon the trial Courts to dispose of long pending criminal cases and therefore,

the trial Courts are getting strict while dealing with recall petitions. If such orders are interfered in a casual manner by this Court, in a way this Court will also be responsible for the pendency of the cases before the subordinate Courts. Therefore, this practice of treating petitions filed under Section 311 of Cr.P.C. in a casual manner and calling witnesses to the Court for cross-examination repeatedly should be stopped. As it is witnesses are hesitant to come before the Court and depose. If they are repeatedly called before the Court, at one stage no one will be ready to appear before the court as witness.

7. There is yet another issue which requires consideration. For instance in this case PW1 was examined in chief in the year 2012. If he is recalled for cross-examination in the year 2019, obviously, due to passage of time and loss of memory, there is bound to be discrepancy in his evidence and this will be again taken advantage by the accused persons.

8. Unless the Courts are going to get strict while dealing with the petitions filed under Section 311 of Cr.P.C. for recalling witnesses, no solution can be found for the disposal of the long pending cases and the docket explosion is going to continue to haunt the Courts.

9. The contentions of the learned counsel for the petitioners that there is a change in counsel for the petitioners again is not a ground for entertaining recall petition and the law on this aspect is well settled.

10. The judgements cited by the learned counsel for the petitioners will not have any bearing on the facts of this case.

11. 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 order passed by the Court below and the order passed by the Court below has to be necessarily sustained.

12. In the result this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in C.C.No.7005 of 2007, 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(CS VI)

//True Copy//

Sub Assistant Registrar

ssr

To

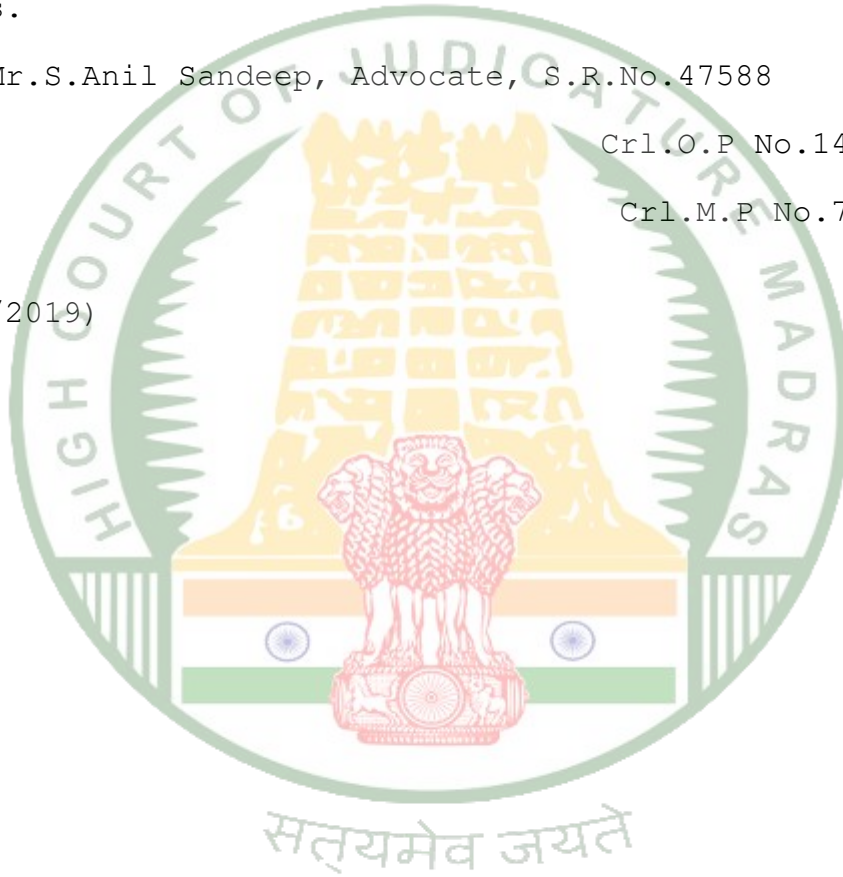
1. The CCB & CBCID Metropolitan Magistrate,
Egmore, Chennai
2. The Inspector of Police,
Central Crime Branch, Team - I,
Chennai.
3. The Public Prosecutor,
High Court of Madras,
Madras.

+3ccs to Mr.S.Anil Sandeep, Advocate, S.R.No.47588

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and
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SAI (CO)

RRS (17/06/2019)



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