

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.06.2019
CORAM
THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.Nos.15771 & 15779 of 2019
and
Crl.M.P.Nos.7887 & 7890 of 2019

1.M.Karnan
2.P.Kalimuthu

... Petitioners in both Crl.O.Ps

Vs.

State by,
The Inspector of Police,
Vadavalli Police Station,
Coimbatore District,
(Crime No.399 of 2014)

... Respondent in both Crl.O.Ps

Common Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.Nos.5334 & 5333 of 2019 in C.C.No.218 of 2015 dated 04.06.2019 on the file of Judicial Magistrate No.VI, Coimbatore and permit cross examine P.W.1 to P.W.7 by reopening the petitioner on the day fixed by this Court.

For Petitioners
in both Crl.O.Ps : Mr.S.Kolandasamy
For Respondent : Mr.M.Mohamed Riyaz,
in both Crl.O.P Additional Public Prosecutor

O R D E R

These petitions have been filed challenging the order passed by the Court below dismissing the application filed under Section 311 of Cr.P.C to recall P.W.1 to P.W.7 for cross examination.

2.The petitioner is facing trial before the Court below for offences under Sections 294(b), 323, 427 and 506(ii) IPC. The final report was filed in this case on 26.05.2015, and it was taken cognizance in C.C.No.218 of 2015. The charges were framed on 25.11.2015. P.W.1 and P.W.2 were examined on 06.02.2017, P.W.3 to P.W.7 were examined on 03.11.2017, P.W.8 was examined on 20.12.2017 and P.W.9 was examined on 30.07.2018. None of these witnesses were cross examined by the petitioner. After the completion of the examination of witnesses on the side of the prosecution, the case was posted for questioning under Section 313 of Cr.P.C.

3. At that point of time, the petitioner filed C.M.P.No.8698 of 2017 to recall P.W.1 to P.W.7 for cross examination. This was allowed and when P.W.1 to P.W.7 were present before the Court on 12.01.2018, the petitioner did not cross examine the witnesses and therefore their evidence was closed. Subsequently, the petitioner filed C.M.P.No.7287 of 2018 for the very same relief and the same was allowed by directing the petitioner to pay a cost of Rs.1,000/- (Rupees One thousand only). The witnesses were present before the Court and the petitioner chose not to cross examine them and resorted to filing a petition under Section 309 of Cr.P.C., seeking for adjournment. Therefore the petition came to be dismissed on 29.08.2018. As against the said order, the petitioner filed Crl.O.P.No.1155 of 2019 before this Court and this Court also dismissed the petition and confirmed the order of the Court below.

4. The petitioner thereafter chose to file C.M.P.No.5333 of 2019 to recall P.W.1 to P.W.7 for cross examination. While filing the said petition, the petitioner wantonly did not reveal about the fact that already the petitioner approached this Court and filed Crl.O.P.No.1155 of 2019 and the same was dismissed. The Court below became aware of the said order since a copy of the order was marked to the Court below.

5. The story does not end here. The petitioner filed a Transfer C.M.P in C.M.P.No.517 of 2019, before the Chief Judicial Magistrate and was taking repeated adjournments before the Court below. The Court below found that the petitioner was dragging on the case and therefore dismissed the petition in C.M.P.No.5333 of 2019 by an order dated 04.06.2019. That Order is the subject matter of challenge in Crl.O.P.No.15779 of 2019.

6. The story is yet to end. The petitioner again filed C.M.P.No.5334 of 2019 before the Court below, seeking for the very same relief to recall P.W.1 to P.W.7 for cross examination. The Court below dismissed the said petition also on the ground that the same is not maintainable and earlier three petitions have been dismissed where the petitioner had sought for a similar prayer.

7. This Court finds that there is absolutely no bona fide on the part of the petitioner and the petitioner was only attempting to drag on the proceedings by filing one petition after another and the petitioner did not cross examine even a single witness in spite of several opportunities. The case has been pending from the year 2015 onwards.

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

9.In the result, both Criminal Original Petitions are dismissed and the Court below is directed to complete the proceedings in C.C.No.218 of 2015, within a period of three months from the date of receipt of copy of this Order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.VI,
Coimbatore.

2.do Thro chief Judicial Magistrate,
Coimbatore.

3.The Inspector of Police,
Vadavalli Police Station,
Coimbatore District,
Crime No.399 of 2014

4.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.S.Kolandasamy, Advocate sr.50861 & 50862

CrI.O.P.Nos.15771 & 15779 of 2019
and
CrI.M.P.Nos.7887 & 7890 of 2019

gj(co)
nr 25/07/2019