

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.07.2019

CORAM:
THE HONOURABLE MR. JUSTICE JAGADISH CHANDIRA

Crl.O.P.No.18989 of 2019
and Crl.M.P.No.9680 of 2019

S. Pandiyan

... Petitioner

vs.

The State represented by its
Inspector of Police,
Vigilance and Anti Corruption,
Tiruppur

... Respondent

Criminal Original Petition filed under Section 482 of Criminal Procedure Code against the order of the learned Chief Judicial Magistrate, Tiruppur dated 9.05.2019 in CMP No.90/2019 in CC No.30 of 2014.

For Petitioner : Mr.N. Thiyagarajan
Senior Counsel for
Ms.V. Geetha Rani

For respondent : Mr.K. Prabakar
Addl. Public Prosecutor

O R D E R

This petition has been filed to set aside the order passed by the learned Chief Judicial Magistrate, Tiruppur in CMP No.90 of 2019 dated 09.05.2019 in Special C.C.No.30 of 2014, dismissing the petition, filed under Sec.311 of Criminal Procedure Code.

2. The case of the petitioner is that he is an accused in Spl.C.C.No.30 of 2014 for the offence under Prevention of Corruption Act. The witnesses P.W.7 and P.W.8 have been examined in chief and due to illness of the counsel in the trial Court, the witnesses were unable to be cross-examined, thereby, the petitioner has filed C.M.P.No.90/2019 before the trial Court, seeking to recall the witnesses for cross-examination.

3. The respondent has filed counter before the trial Court stating that the petition is false, frivolous, vexatious and not maintainable either on law or facts. In the counter it has been stated that P.W.7 viz., Tmt.Karpagam Badragiri, retired Additional Director of Tamil Nadu Forensic Science Laboratory, Chennai was examined as P.W.7 on 16.11.2017 and

cross-examined by the learned counsel for the petitioner and P.W.8 viz., Thiru.Unnikrishnan was examined in chief on 11.01.2018 and after lapse of one year, petition had been filed to recall the witnesses without mentioning any valid reason for the inordinate delay.

4. The trial Court, after hearing both the parties and after perusing the records, dismissed the petition stating that no valid reason has been stated for recalling the witnesses and that the case also falls under the caption of "more than five years old". Aggrieved over the above said order, the petitioner has filed the present petition.

5. The learned Senior Counsel appearing for the petitioner would submit that P.W.7 and P.W.8 are the important witnesses and that if they are not permitted to be recalled and cross-examined, the petitioner will be put to great hardship. He would further submit that the petitioner is an accused in a Trap case, registered under Prevention of Corruption Act. He would submit that as per Sec.20 of the Prevention of Corruption Act, there is presumption operating against him and that unless such presumption is rebutted by proper cross-examination, the defence of the petitioner will be seriously prejudiced.

6. The learned Additional Public Prosecutor would submit that the trial Court, on valid reasons, had dismissed the petition, filed under Section 311 of Criminal Procedure Code. He would further submit that the case has been taken on file on 16.09.2008 and that P.W.7 was examined in chief on 16.11.2017 and cross-examined by the learned counsel for the petitioner on the same day and P.W.8 was examined in chief on 11.01.2018, whereas, he has not been cross-examined.

7. The learned Senior Counsel for the petitioner would further submit that though there have been certain lapses on the side of the petitioner/accused, in the interest of fair trial, the petitioner should be afforded an opportunity to recall and cross-examine P.W.7 and P.W.8.

8. I have gone through the order passed by the learned Chief Judicial Magistrate, Tiruppur and perused the materials available on record.

9. I do not find any infirmity in the order passed by the learned Chief Judicial Magistrate, Tiruppur. Though several opportunities have been given to the petitioner, he has not cross-examined the witnesses and thereby the learned trial Judge has rightly dismissed the petition.

10. This Court, on earlier occasion, through the learned Additional Public Prosecutor, enquired the respondent to find

out whether the witnesses are available and whether it could be possible for the respondent to produce the witnesses and also state about the stage of the case. The learned Additional Public Prosecutor, on instructions, submitted that the witness are available and the case stands posted for examination of defence witnesses on 05.09.2019.

11. As stated above, though there is no infirmity in the order passed by the trial Court, taking into consideration that the petitioner is an accused for the offence punishable under Prevention of Corruption Act and that too when Section 20 of the Act operates against the petitioner, this Court is of the opinion that a chance may be given to the petitioner to cross-examine P.W.7 and P.W.8 on imposition of costs and terms.

12. In view of the above, the petitioner is directed to approach the trial Court within a period of one week from the date of receipt of a copy of this order and file a petition to recall P.W.7 and P.W.8. The petitioner shall deposit a sum of Rs.10,000/- (Rupees Ten thousand only) before the trial Court at the time of filing the petition to recall. On such petition being filed and deposit being made, the trial Court shall allow the petition, fix a date and recall the witnesses. On their appearance before the trial Court, the petitioner shall cross-examine the witnesses on the same day without seeking an adjournment. The learned trial Judge shall, out of the amount Rs.10,000/-, pay Rs.2,500/- (Rupees Two thousand five hundred only) to each of the witnesses on the date of their cross-examination and the balance of Rs.5,000/- (Rupees Five thousand only) shall be paid to the District Legal Services Authority, Tiruppur.

13. Further, the petitioner shall file an affidavit of undertaking that he will cross-examine the witnesses on the date of their appearance without fail.

14. With the above direction, the petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

sr

To

1. The Chief Judicial Magistrate,
Tiruppur.

2.The Inspector of Police,
State of Tamil Nadu,
Vigilance and Anti Corruption,
Tiruppur

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

+2ccs to M/s.V.Geetha, Advocate, S.R.No.62217

CrI.O.P.No.18989 of 2019

CP(CO)

RRS (22/07/2019)



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