

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.6013 of 2017

and

CrI.M.P No.4490 of 2017

Uma Maheswari

...Petitioner/Defacto Complainant

Vs.

1. Palanisamy

2. Soundaram

3. M.Kailasam

4. M.Natarajan

5. V.Velusamy

6. The State Rep. by

Inspector of Police,

Sivagiri Police Station,

Erode District.

Crime No.133 of 2007

...Respondents/Petitioners 2 to 6

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to set aside the order dated 07.03.2017 made in CrI.M.P No.730 of 2017 in C.C No.4 of 2009 on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

For Petitioner : Ms.Yogalakshmi

For Mr.M.Guruprasad

For 1st Respondent : Mr.Deepan Uday

For 2nd Respondent :Mr. C.Prakasam

For 6th Respondent:Mr. M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

This petition has been filed against the order passed by the Court below allowing the application filed under Section 311 of Cr.P.C by the respondents to recall PW1 to PW7 for cross examination.

2. The respondents 1 to 5 are facing trial before the Court below for the offences under Sections 420, 467, 468, 471 and 109 of IPC in C.C No.4 of 2009. The prosecution had examined PW1 to PW7 between the years 2013 to 2014. None of these witnesses were cross examined by the respondents. Subsequently, the respondents filed an application in CrI.M.P No.5377 of 2014 to cross examine PW1 to PW7 and the same was allowed by the Court below by an order dated 17.12.2014.

3. PW1 to PW4 appeared before the Court on 15.12.2016, they were not cross examined by the respondents. PW5 and PW6 appeared on 12.07.2017 and these witnesses were also not cross examined by the respondents. PW7 appeared before the Court on 30.01.2017 and this witness was also not cross examined by the respondents 1 to 5. The Court below therefore had closed the evidence of PW1 to PW7.

4. Thereafter, the respondents once again filed an application under Section 311 of Cr.P.C during March 2017 to recall PW1 to PW7 for cross examination. This petition has been allowed by the Court below and aggrieved by the same, the de-facto complainant/petitioner has approached this Court.

5. The learned counsel for the petitioner submitted that PW1 to PW7 were present before the Court on two occasions and on both the occasions, the respondents choose not to cross examine these witnesses. The recall petition that was earlier filed by the respondents was also allowed by the Court below and inspite of the same, the respondents failed to cross examine PW1 to PW7. The learned counsel therefore submitted that the Court below ought not to have allowed the present petition to recall PW1 to PW7 and therefore, the order of the Court below requires interference.

6. The learned counsel appearing on behalf of the respondents 1 to 5 submitted that one last opportunity can be given to the respondents to recall and cross examine PW1 to PW7. The learned counsel submitted that the respondents will have to be afforded an opportunity of fair trial in order to defend themselves in the case.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. This Court is of the considered view that the Court below has allowed the 311 Cr.P.C petition filed by the respondents in a very casual manner without any application of mind. The Court below had already allowed the recall petition filed by the respondents on an earlier occasion and the

witnesses who were recalled and present in Court were not cross examined by the respondents and therefore, their evidence was closed. Under such circumstances, the Court below ought not to have entertained the second application for the very same relief.

9. It will be useful to rely upon the judgment of this Court in M.Vellaisamy and another v. Inspector of Police, Central Crime Branch, Team-I, Chennai reported in 2019 (2) MWN (Cr.) 171 . The relevant portions are extracted hereunder:

"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 inspite 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 Courts as Witness".

10. The facts of this case are squarely covered by the above judgment. This Court has no hesitation to interfere with the order passed by the Court below and accordingly, the order

passed by the Court below in C.M.P No.730 of 2017 dated 07.03.2017, is hereby set aside.

11.This Criminal Original Petition is allowed and there shall be a direction to the Court below to complete the proceedings in C.C No.4 of 2009 within a period of three months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To

1.The District Munsif cum Judicial Magistrate,
Kodumudi.

2. The Inspector of Police,
Sivagiri Police Station,
Erode District.

3. The Public Prosecutor,
High Court of Madras.

+1 CC to Mr.M.Guruprasad, Advocate sr 55591.

CRL.O.P No.6013 of 2017
and

सत्यमेव जयते Cr1.M.P.No.4490 of 2017

VBA (CO)
SP(26/07/2019)

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