



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.10539 of 2017
and
CrI.M.P.No.6951 of 2017

Maragatham

... Petitioner/
Complainant

Vs.

1.N.Chandran
2.Muthulakshmi
3.Alamelu
4.Mohan
5.Nachiappan
6.Pavalayee
7.Nallgounder
8.Rangasamy @ Pinangukarar
9.Perumayee
10.Viswanathan
11.Balakrishnan
12.Madheswari
13.N.Natrayan
14.N.Bharathi
15.Santhaya

... Respondents/Accused No.1 to 15

Criminal Original Petition filed under Section 482 Cr.P.C.,
praying to set aside the order dated 04.04.2017 made in
CrI.M.P.No.744 of 2017 in C.C.No.112 of 2014 on the file of the
Judicial Magistrate No.I, Sankari.

For Petitioner : Mr.N.Manokaran
For R1, R3 to R6 &
R9 to R15 : Mr.R.Jayaprakash

O R D E R

This Criminal Original Petition has been filed against the
order passed by the Judicial Magistrate No.I, Sankari, on
04.04.2017, in CrI.M.P.No.744 of 2017 in C.C.No.112 of 2014,
allowing the application filed under Section 311 Cr.P.C. to
recall P.W.1, P.W.5 and P.W.6 for cross-examination.



2.The petitioner is the complainant before the Court below, who has instituted warrant proceedings, otherwise than on police report, for an offence under Section 494 r/w. 109 IPC.

3.In accordance with the procedure stipulated in Chapter XIX (B) of the Code of Criminal Procedure, the Court below proceeded to examine the witnesses under Section 244 Cr.P.C. Even though the accused persons are entitled to cross-examine the witnesses, they chose not to cross-examine the witnesses. The case also reached the stage of framing of charges. At that point of time, the accused persons filed the present application under Section 311 Cr.P.C. to recall and cross-examine P.W.1, P.W.5 and P.W.6.

4.The Court below has allowed the said application on the ground that the accused persons are entitled to cross-examine the witnesses before the charges are framed and that an opportunity must be given to the accused persons to recall P.W.1, P.W.5 and P.W.6.

5.Mr.N.Manokaran, learned counsel appearing on behalf of the petitioner submitted that the Court below did not even consider the reason adduced by the accused persons in the application filed under Section 311 Cr.P.C. The learned counsel submitted that the accused persons had gone to the extent of stating that the witnesses were not cross-examined, since they would have been tutored and they will have the facts of the case fresh in their mind and therefore, the accused persons chose to defer the cross-examination and filed the application at the later point of time to recall P.W.1, P.W.5 and P.W.6. The learned counsel submitted that this very reason that has been adduced in the application is enough to dismiss the application filed by the accused persons under Section 311 Cr.P.C. The learned counsel further submitted that the right of the accused persons is not foreclosed and even after the framing of charges, the accused persons are always entitled to cross-examine the witnesses.

6.Per contra, the learned counsel appearing on behalf of the respondents submitted that the Court below has applied its mind and has given an opportunity to the accused persons to cross-examine P.W.1, P.W.5 and P.W.6. The learned counsel submitted that, even though the accused persons will have an opportunity to cross-examine the witnesses after the charges are framed, since, now there is an opportunity to cross-examine the witnesses, the accused persons can develop a strong case to get discharged from the case, even before the charges are framed. The learned counsel, therefore submitted that, there is no ground to interfere with the order passed by the Court below.

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



8.As rightly submitted by the learned counsel for the petitioner, the reason adduced by the accused persons to recall P.W.1, P.W.5 and P.W.6 for cross-examination, by itself, should have been taken as a ground to dismiss the application. The reason stated by the accused persons is totally unacceptable and it goes against the dictum of the Hon'ble Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Crl) 288]. Witnesses are supposed to be cross-examined on the same day, they are examined in chief and they cannot be called at the will and pleasure of the accused persons for cross-examination.

9.This Court is of the view that the Court below failed to take note of this main factum and has allowed the application as a matter of course and it has not dealt with the application judiciously. It is not as if the accused persons have lost their opportunity to cross-examine the witnesses and they can always cross-examine the witnesses even after the charges are framed by the Court below.

10.In view of the above, the order passed by the Judicial Magistrate No.I, Sankari, on 04.04.2017, in Crl.M.P.No.744 of 2017 in C.C.No.112 of 2014, is hereby set aside and this Criminal Original Petition is allowed accordingly. Consequently, connected Miscellaneous Petition is closed. The Court below is directed to complete the proceedings in C.C.No.112 of 2014 within a period of four months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mkn

To

The Judicial Magistrate No.I,
Sankari.

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.57709
+1cc to Mr.N.Manokaran, Advocate, S.R.No.57163

Crl.O.P.No.10539 of 2017 and
Crl.M.P.No.6951 of 2017

MG(CO)
CS/13/08/2019