

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.OP No.23153 of 2019

Eashwaran

...Petitioner

.Vs.

The State Rep.by
The Deputy Superintendent of Police,
NIBCID,
Vellore.
Cr.No.89/2017

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in CMP No.314/2019 in CC No.28/2018 dated 08.08.2019 on the file of Special Court for EC Act Cases, Salem and direct Special Court Judge to recall PW-1 to PW-3 for the purpose of cross examination.

For Petitioner : Mr.T.Muruganantham

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

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner u/s 311 of Cr.P.C., to recall PW-1 to PW-3 for cross examination.

2.The petitioner is facing trial before the Court below for an offence u/s 8(c) r/w 20(b) (ii)(C) NDPS Act. The prosecution had examined PW-1 to PW-3 on 06.06.2019. The petitioner was not in a position to cross examine these witnesses. Therefore, a petition came to be filed immediately to recall and cross examine PW-1 to PW-3. This petition was dismissed by the Court below on the ground that the petitioner ought to have cross examined the witnesses on the same day they were examined in chief.

3.The learned counsel for the petitioner submitted that the petitioner is facing very serious charges and the petitioner had engaged a counsel who did not cross examine PW-1 to PW-3 and

infact the petitioner had sought for an adjournment which was rejected by the Court below. The learned counsel submitted that one last opportunity may be given to the petitioner to recall PW-1 to PW-3 for cross examination.

4.The learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that there are no grounds to interfere with the order passed by the Court below.

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

6.It is seen that the petitioner is facing trial for a very serious offence under the NDPS Act. The petitioner had taken steps to recall the witnesses immediately, and the petitioner is not able to cross examine the witnesses since the counsel was not available. This Court is of the considered view that one last opportunity can be given to the petitioner to recall PW-1 to PW-3 for cross examination.

7.In view of the above, the order passed by the Court below in CMP No.314 of 2019 dated 08.08.2019, is hereby set aside. The Court below shall issue summons to PW-1 to PW-3 and fix a date for their cross examination. On the day when these witnesses are present before the Court below, the witnesses shall be cross examined on the same day and it shall be completed on the same day. If for any reason, the petitioner fails to cross examine the witnesses, the petitioner will forfeit his right to recall the witnesses in future. It is also made clear that all the other witnesses to be examined by the prosecution shall be cross examined on the same day they are examined in chief. The petitioner shall pay a cost of a sum of Rs.500/- to each of the witnesses on the date of their appearance.

In the result, this Criminal Original Petition is allowed, and there shall be a direction to the Court below to complete the proceedings in C.C.No.28 of 2018, within a period of three months from the date of receipt of copy of this order.

Kp

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Superintendent of Police,
NIBCID,
Vellore.

2.The Judge, Special Court for EC Act Cases,
Salem.

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

+1cc to Mr.T.Muruganantham, Advocate, SR.No.73975

Crl.OP No.23153 of 2019

Kak(03/09/2019)



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