

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P.No.8703 of 2017
and
Crl.M.P.No.6204 of 2017

P.Krishnamurthi ... Petitioner/Defacto Complainant
Vs.

1.N.R.Venkatachalam ... 1st Respondent/Petitioner

2.The State Rep.
Sub-Inspector of Police,
Perundurai Police Station,
Erode District. ...2nd Respondent/Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to set aside the order dated 07.04.2017 made in Crl.M.P.No.1155 of 2017 in C.C.No.36 of 2014 on the file of the Judicial Magistrate No.1, Erode.

For Petitioner : Mr.M.Guruprasad

For R1 : Mr.R.Prabakar

For R2 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed against the order passed by the Judicial Magistrate No.I, Erode, in Crl.M.P.No.1155 of 2017 in C.C.No.36 of 2014, allowing the application filed by the 1st respondent, under Section 311 Cr.P.C. to recall P.W.1 for further cross-examination.

2.The petitioner is the de facto complainant. Based on his complaint, an FIR came to be registered against the accused persons and on completion of the investigation, a final report was filed before the Court below and charges were framed for the offences under Sections 120(b), 468, 471 and 506(i) IPC. The petitioner was examined as P.W.1. The petitioner was cross-

examined in detail by both the accused persons. While so, A2, who is the 1st respondent in this petition, filed a petition before the Court below to recall P.W.1 for further cross-examination. This petition was allowed by the Court below on the ground that the accused persons must be given sufficient opportunity to defend themselves in the case and in order to ensure fair trial.

3.The learned counsel for the petitioner submitted that the petitioner was cross-examined by both A1 and A2 in detail and the petitioner, who was nearly aged about 70 years, was made to come to the Court atleast on three occasions. The learned counsel further submitted that the Court below has allowed the recall petition without assigning any reason and as a matter of course. Therefore, the order passed by the Court below requires interference by this Court under Section 482 Cr.P.C.

4.Per contra, the learned counsel appearing on behalf of the 1st respondent submitted that the 1st respondent had specifically given the reasons as to why the petitioner must be recalled for further cross-examination even in the recall petition. The learned counsel further submitted that the Court below had applied its mind and had permitted the 1st respondent to recall the petitioner in order to ensure that fair opportunity is given to the accused persons to defend themselves effectively.

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

6.This Court carefully perused the entire deposition of P.W.1. It is seen that P.W.1 was sufficiently cross-examined both by A1 and A2. The petitioner was cross-examined by A1 on 19.09.2013 and by A2 on 05.10.2013. This petitioner was again recalled by A1 and again cross-examined on 14.02.2017. Subsequently, A2 filed the present application to recall P.W.1 for further cross-examination. P.W.1 has been subjected to cross-examination atleast thrice before the Court below. The Court below did not take this aspect into consideration and had allowed the recall petition without judiciously considering the same.

7.In the considered view of this Court, the order passed by the Court below is illegal and the same requires interference by this Court in exercise of its jurisdiction under Section 482 Cr.P.C. In the result, this Criminal Original Petition is allowed and the order passed by the Court below in CrI.M.P.No.1155 of 2017 in C.C.No.36 of 2014, dated 07.04.2017, is hereby set aside. Consequently, connected Miscellaneous Petition is closed.

8.The Court below is directed to complete the proceedings in C.C.No.36 of 2014 within a period of four months from the date of receipt of copy of this order.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.1,
Erode.

2.The Sub-Inspector of Police,
Perundurai Police Station,
Erode District.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Prabakar, Advocate, S.R.No.57760
+1cc to Mr.Guruprasad, Advocate, S.R.No. 57402

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RSI(CO)
GN(16/08/2019)