

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.24046 of 2019

Siva Kumar

...Petitioner/Accused-2

Vs

State by Sub Inspector of Police,
Central Crime Branch,
Bank Fraud Prevention Wing,
Veppery, Chennai
(Crime No.507/2009)

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, against the order passed in Crl.M.P.No.6195 of 2018 in C.C.No. 2676 of 2010 dated 13.05.2019 by the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai, and consequential to recall the witness P.W.1 and P.W.2 in the above case.

For Petitioners : Mr.C.Mohan Raj

For Respondent : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

O R D E R

This petition has been filed by the petitioner/A-2, seeking to set aside the order passed in Crl.M.P.No.6195 of 2018 in C.C.No. 2676 of 2010 dated 13.05.2019 by the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai, and consequential to recall the witness P.W.1 and P.W.2 in the above case.

2. The learned counsel for the petitioner would submit that P.W.1 and P.W.2 have been examined in chief on 25.07.2014 and 14.06.2016 respectively. Thereafter, there has been no progress in the trial. He would further submit that on the date of their examination in chief, the learned counsel for the petitioner was not available and thereafter, since there was a slow pace in the trial, there had been the delay in recalling the witnesses. He would further submit though admittedly, there are some lapses on the petitioner in filing the petition belatedly, P.W.1 and PW.2 are crucial witnesses and if the petitioner is not permitted to recall and cross examine them, the petitioner will be put to great hardship.

3. The learned Additional Public Prosecutor appearing for the respondent would submit that the witnesses were cross examined during the year 2014 and 2016 and no valid reason has been stated in the petition to recall the witnesses.

4. I do not find any infirmity in the order passed by the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai. The order has been passed as per the mandate of the Hon'ble Apex Court reported in Vinoth Kumar Vs. State of Punjab reported in 2015 [2] SCC [Crl.] 226. However, in order to give an opportunity to the accused, the Trial Court is directed to recall the witnesses PW.1 and PW.2 on condition that the petitioner pay a sum of Rs.2,500/- each to the witnesses on their date of appearance before the Court. The amount of Rs.5000/- shall be deposited at the time of filing the process application. Further, the petitioner shall file an affidavit of undertaking that the learned counsel representing the petitioner shall cross examine the witnesses P.W.1 and P.W.2 on the same day of their appearance and further, cross examine the remaining witnesses on the day of their examination in chief.

5. With these observations, the Criminal Original Petition stands closed. It is made clear that on failure to cross examine the witnesses appearing on the particular day, the petitioner will lose his opportunity of cross examining them. The case is of the year 2010 and the Trial Judge shall accord priority and dispose of the case expeditiously.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

jrs
To

Sub Assistant Registrar

- 1) The Sub Inspector of Police,
Central Crime Branch,
Bank Fraud Prevention Wing,
Veppery, Chennai
- 2) The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.C.Mohan Raj, Advocate, S.R.No.76735

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RK(CO)
SSM(09/09/2019)