

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.No.24164 of 2019

and

Crl.M.P.No.12784 of 2019

S.Subramaniam

... Petitioner/ Petitioner/ Accused

Vs

State rep by
The Inspector of Police,
District Crime Branch, Tiruppur,
Tiruppur District.
Cirme No.13/2011

....Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to set aside the order passed by the learned Judicial Magistrate No.I, Tiruppur in Crl.M.P.No.3349 of 2019 in C.C.No.33 of 2012 dated 08.08.2019.

For Petitioner : Mr.E.K.Kumaresan

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

O R D E R

This Criminal Original Petition has been filed by the petitioner challenging the order passed by the Court below in Crl.M.P.No.3349 of 2019 in C.C.No.33 of 2012 dated 08.08.2019 on the file of the Judicial Magistrate No.I, Tiruppur, thereby, dismissing the petition filed by the petitioner under section 311 of Cr.P.C to permit the petitioner to recall the witnesses P.Ws.1 to 5 and 8,10 and 11.

2.The learned counsel for the petitioner would submit that in respect of PW1, only Xerox copies were marked and that it was objected by the learned counsel for the petitioner before the trial Court and till originals have not been produced before the trial Court in respect of P.Ws.2 and 3 the examination was in chief was adjourned at request of the prosecution. However, thereafter they have not been produced before the Court for

further cross examination. Since, the petitioner has to defend this case, the petitioner had filed a petition seeking to recall the witness. However, the trial Court placing reliance on [Vinod Kumar Vs. State of Punjab] reported in 2015 [1] MLJ [Cri] 288, had dismissed the petition to recall the witness. He would submit that if the petitioner is not permitted to recall and cross examine the witnesses it would amount to a case of no defence causing grave prejudice and hardship to the petitioner. He would further submit that though there had been some lapses on the side of the defence, the entire blame cannot be placed on the petitioner for not recalling them immediately, since the prosecution despite the objection has marked the xerox copies only and has not brought P.Ws.2 and 3 for further examination in chief and thereby, would pray that the order may be set aside and the petition may be permitted to recall the witness for cross examination. He would further submit that the witnesses may be recalled on terms and conditions.

3. The learned Additional Public Prosecutor would submit that the PW1 was examined on 27.06.2012, PWs.2 and 3 were examined on 08.02.2013, PW4 was examined on 25.02.2016, PW5 was examined on 24.09.2016, PW8 examined on 03.04.2017, PW10 was examined on 04.04.2018 and PW11 was examined on 26.07.2018. Despite several opportunities the petitioner had not recall the witnesses and the petitioner with lethargic attitude had failed to cross examine them on the same day and the petition has been filed admittedly, at the fag end to delay progress of trial.

4. I have gone through the documents on record. I do not find any infirmity in the order passed by the Court below. The Trial Court has passed the order in terms of guidelines issued by the Apex Court in [Vinod Kumar Vs. State of Punjab] reported in 2015 [1] MLJ [Cri] 288. However, since P.Ws.2 and 3 have been examined in chief in part and had been adjourned at the request of the prosecution for further examination and thereafter, having not been produced before the Court, this Court is of the opinion that an opportunity can be given to the the petitioner to recall the witnesses on imposition of terms and costs.

5. The petitioner is directed to file a petition to recall P.Ws1 to 5 and P.Ws.8 and 10 and 11 along with a deposit of Rs.10,000/- [Rupees Ten Thousand Only] within five days from the date of receipt of a copy of this order and out of the amount of Rs.10,000/-, an amount of Rs.8,000/- (Rs.1,000/- to each of the witnesses) shall be paid to the witnesses on the date of their appearance and the balance amount of Rs.2,000/- shall be directed to be paid to the Legal Service Authority of the concerned Court. The petitioner shall also file an affidavit of undertaking to cross examine the witnesses on the same day of

their appearance. If the petitioner fails to cross examine the witnesses on the day of their appearance the petitioner will lose his opportunity to cross examine them. Since the case is of the year 2012, the learned Magistrate shall complete the trial as expeditiously as possible. Consequently, connected miscellaneous petition is closed.

ssi/mpa

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Tiruppur.

2.The Inspector of Police,
District Crime Branch,
Tiruppur, Tiruppur District.

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

+1cc to Mr.E.K.Kumaresan, Advocate, SR.No.77063/19

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Kak (20/09/2019)



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