

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 18.09.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.948/2019

and

Crl.MP.No.13454/2019

G.Seenu @ Srinivasan

..Petitioners/ Accused 1

Vs

State rep. By
The Inspector of Police,
CBCID, Coimbatore.
(Crime No.3/2004)

..Respondent/Complainant

Prayer:- The Criminal Revision Petition is filed under Section 397 and 401 of Cr.PC., to set aside order passed by the I Additional District and Sessions Judge, Erode, made in C.M.P.No.20/2019, in C.A.No.8/2013 dated 02.08.2019.

For Petitioners : M/S.C.D.Johnson

For Respondents : Mr.M.Mohamed Riyaz, APP

ORDER

1.This criminal revision petition has been filed by the petitioner/A-1, seeking to set aside order, passed by the I Additional District and Sessions Judge, Erode, made in C.M.P.No.20/2019, in C.A.No.8/2013, dated 02.08.2019, dismissing the said petition, filed under Section 391 of Cr.P.C to recall the witnesses, PW.1 to PW.14 for cross examination and to adduce further defence side witnesses and for marking of documents.

2.This Court heard the learned counsel on both sides.

3.The petitioner was found guilty and convicted and sentenced for the offences under Section 120 -B r/w 489 A-D r/w 109 of IPC, by the learned I Additional Subordinate Judge, Erode, in S.C.No.146/2008 and as against the conviction and sentence, the petitioner had filed an appeal in C.A.No.8/2013. When the appeal was posted for judgment on 25.02.2019, the petitioner

had filed a petition in CrI.MP.No.20/2019 in C.A.8/2013 under section 391 of Cr.P.C, to re-open and re-call the witnesses PW.1 to PW.14 for cross examination and to adduce further defence side witnesses and for marking of documents. The grounds raised by the petitioner was that the petitioner herein is having a valid defence and a prima facie case in his favour and thereby, to elicit the truth from the the witnesses in the interest of justice, the petitioner had to cross examine the witnesses PW.1 to PW.14 and to adduce some of the defence witnesses and the trial Court had dismissed the petition. As against the order of dismissal, the present revision has been filed.

- 4.The learned counsel for the petitioner would submit that since further evidence was required, necessarily to prove the defence, the petitioner had filed the petition, seeking to adduce further evidence, however, the learned trial Judge without taking into consideration, had dismissed the petition.
- 5.The learned Additional Public Prosecutor would vehemently oppose, stating that a vague attempt had been made by the petitioner to recall the witnesses already examined under the guise of a future evidence only with an intention to delay the delivery of judgment in the appeal and that there were no valid grounds raised by the petitioner for recalling the witnesses to adduce further evidence and thereby, the learned Appellate Judge had rightly dismissed the petition filed under Section 391 of Cr.P.C., by the impugned order, which warrants no interference.
- 6.I have gone through the materials placed on record.
- 7.It is seen that the trial court had delivered the judgement in S.C.No.146/2008, on 04.02.2013 and the appeal had been filed during the year 2013. The petition filed under section 391 of Cr.P.C had been filed on 22.02.2019, when the appellate court had posted the appeal in CrI.A.8/2013 for judgement.
- 8.The learned Judge had stated the following reasons for dismissing the petition:
 - (i)the petitioner had not stated any valid reasons and the purpose for which the documents are going to be relied.
 - (ii)the witnesses sought to be recalled under the guise of further evidence were already recalled and cross-examined during the trial.
- 9.During the trial, PW1 had been examined on 18.12.2009 and the evidence of the prosecution was closed by cross examination of PW14-Investigation Officer on 17.06.2010. On the side of the defence, DW1 had been examined and thereafter, an opportunity

had been given to the petitioner for recalling all the witnesses on an application filed under Section 311 of Cr.P.C by him and all the witnesses were cross examined in length before the trial Court and thereby, the Appellate Court had found that an attempt was made to conduct a retrial. The petition had been filed during appeal at the stage when the case had been posted for judgement and it had been filed only with a view to delay the delivery of judgement.

10. The petitioner had already filed a petition in CrI.OP.09 of 2019 for the very same relief and had chosen to withdraw the same without stating any reason and subsequently filed the present petition.

"391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) ...

(3)

(4) ..."

As per Section 391 of Cr.P.C, only if the Appellate Court is of the opinion that additional evidence is necessary, it may either take evidence itself or direct it to be taken by the Magistrate. In this Case, the Appellate Court finding that there is no necessity for taking additional evidence and finding that the witnesses sought to be called for additional evidence have been recalled and extensively examined before the trial Court had rejected the petition. The Appellate Court has given detailed reasons for not allowing the petition for additional evidence.

11. I do not find any infirmity in the above reasons assigned by the Appellate Court for dismissing the petition for recalling the witnesses and and cross examined them, who were already recalled and cross examined from the trial Court.

12. This court is also of the opinion that the petition to recall and cross examining the witnesses have been already recalled and cross examined, has been filed only to delay delivery of the judgement and that there are no merits in the contentions of the learned counsel for the petitioner.

13. In the result, this criminal revision petition is dismissed; confirming the order passed by the I Additional

District and Sessions Judge, Erode, made in C.M.P.No.20/2019,
in C.A.No.8/2013 dated 02.08.2019. Consequently, the connected
Miscellaneous Petition is closed.

jrs

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The I Additional District
and Sessions Judge, Erode.

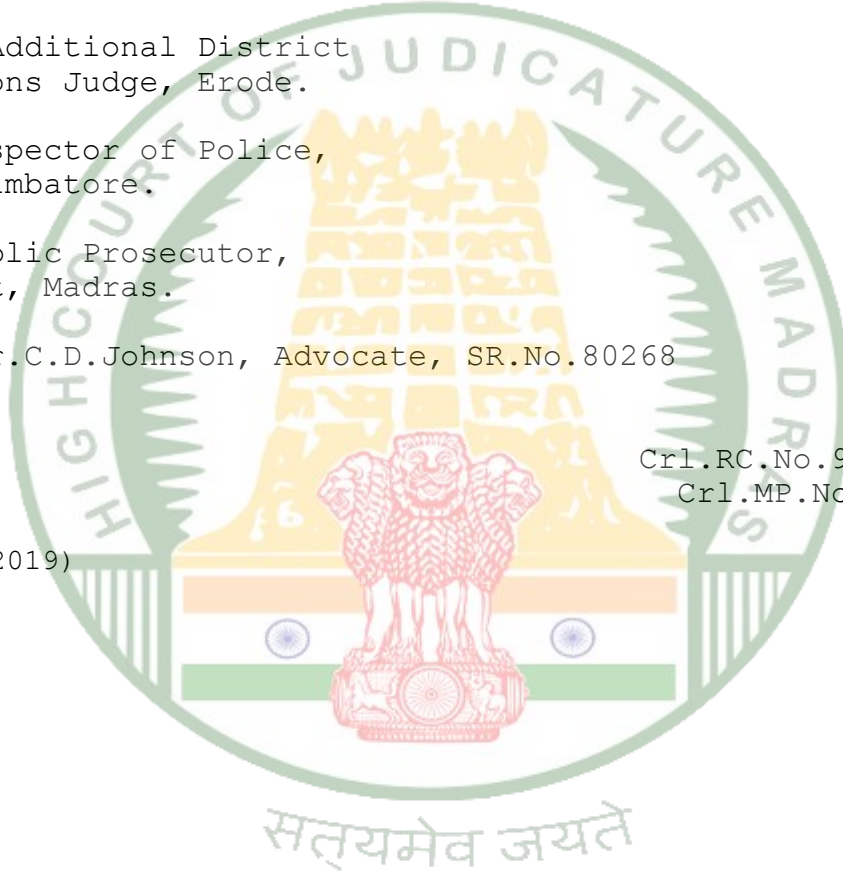
2. The Inspector of Police,
CBCID, Coimbatore.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.D.Johnson, Advocate, SR.No.80268

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CrI.MP.No.13454/2019

Kak(05/11/2019)



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