

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

DATED 25.10.2019

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.28802 OF 2019

&

CrI.M.P.No.15372 of 2019

M. Ramamoorthy

.. Petitioner

Vs

State, represented by
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Krishnagiri District

.. Respondent

Prayer: Petition filed under Section 482 of Cr.P.C., praying to set aside the order passed by the learned Chief Judicial magistrate Court, Krishnagiri in CrI.M.P.No.5989 of 2019 in Spl.C.C.No.04 of 2011 dated 01.10.2019 .

For Petitioner: M. Jagadeesan

For Respondent: M/s.Kritika Kamesh
Govt. Advocate (crl.side)

ORDER

The petitioner is an accused in Spl.C.C.No.4 of 2011 which is pending trial before the Chief Judicial Magistrate, Krishnagiri and he is also facing another trial in connection with another case before the same Court. The petitioner had filed petition under Section 311 Cr.P.C., before the trial Court to recall PW1 sanction witness, PW2 decoy, PW3 accompanying witness and PW5 another witness to the trap and PW14 TLO for cross examination in Spl.C.C.No.04 of 2011.

2. The submission of the petitioner is that the witnesses have been examined with much delay over the years and all the witnesses speak to the identical facts, hence exposing fear to his defence, he could not cross examine the witnesses then and there. The trial Court by its order dated 01.10.2019 had dismissed the same.

3. The contention of the petitioner is that it is a case of trap. The evidence would be complete only on cross examination of the witnesses. Unless the witnesses are cross examined and their evidences is complete in all aspects, the purpose of Trial would be defeated and great prejudice would be caused to the petitioner.

4. Learned Govt. Advocate (crl. side) opposes the petition on the ground that the petitioner was given sufficient opportunity, before the lower court PW1 was examined on 21.2.2017, PW2 was examined on 26.09.2018, PW3 was examined on 12.10.2018, PW5 was examined on 7.1.2019 and PW14 was examined on 6.6.2019 and more than two years have lapsed, still the first witness is yet to be cross examined by the defence. Further some of the official witnesses have retired from service and procuring the witnesses involves great difficulty with delay. It is further submitted that the petitioner having foregone his right of cross examination cannot sustain his claim now. Thus she prayed for dismissal of this petition.

5. Considering the rival submissions and on perusal of the lower Court order, it is seen that this is a case of trap. PW2, PW3, PW4 are witnesses to the identical facts and PW5 being TLO and he has to be questioned with regard to omissions and contradictions of PW2, PW3, PW5. The evidence of witnesses would be complete in all sense only on cross examination which is a indispensable right. Considering the same, this court is inclined to permit the petitioner to recall PW1, PW2, PW3, PW5 and PW14 for their cross examination, since the case is of the year 2011.

6. The trial Court is directed to complete the process of recall and cross examination of these witnesses within a period of three months from the date of receipt of a copy of this order. It is also submitted that A2 the other accused have also not done cross examination of these witnesses. To avoid further delay, A2 is also permitted to cross examine these recalled witnesses if he desires so.

7. With the above observation, this petition is ordered. Consequently connected Crl.M.P. is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

msr

To

1. The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Krishnagiri District

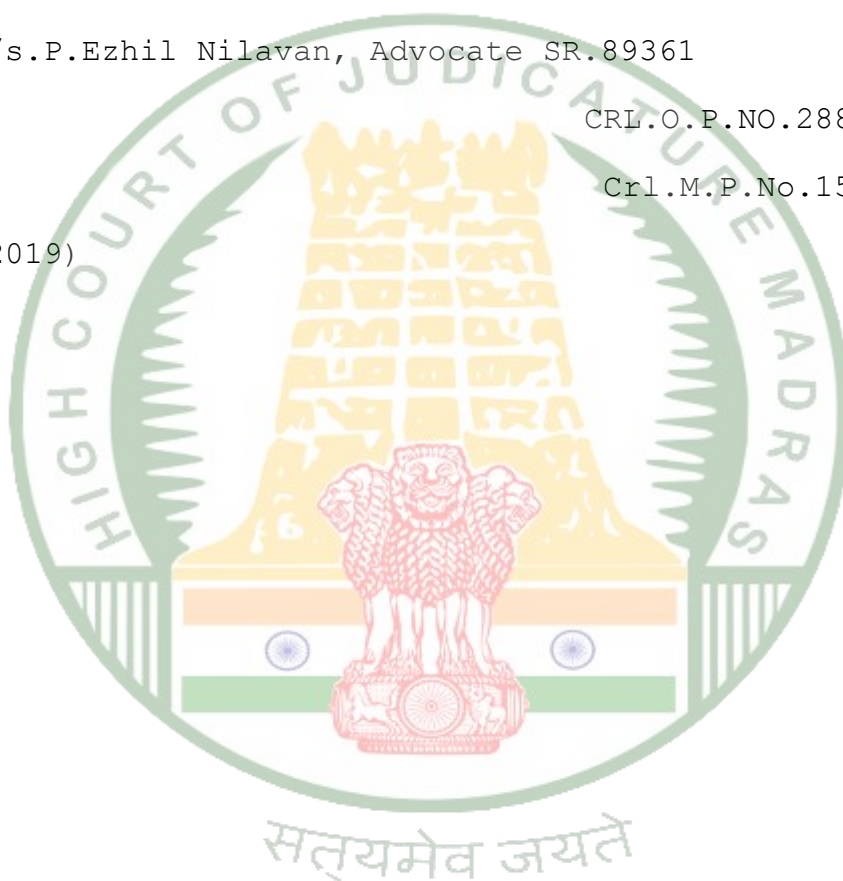
2. The Public Prosecutor,
High Court, Madras

3. The Chief Judicial Magistrate,
Krishnagiri.

+lcc to M/s.P.Ezhil Nilavan, Advocate SR.89361

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