

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2019

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

Crl.O.P. No.31763 of 2019

Dinesh @ Dineshkumar

... Petitioner

.vs.

State of Tamil Nadu Rep. by  
The Inspector of Police,  
Yethapur Police Station,  
Salem District.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 18.11.2019 passed by the Trial Judge in unnumbered Criminal Miscellaneous Petition in respect of S.C.No.178 of 2015 on the file of the III Additional District Sessions Court Salem and permit to reopen the case for examination of witnesses.

For Petitioner : Mr.D.Mario Johnson

For Respondent : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

This petition has been filed by the accused to set aside the order passed by the learned III Additional Sessions Judge, in unnumbered Criminal Miscellaneous Petition dated 18.11.2019 in S.C.No.178 of 2015.

2. The learned counsel for the petitioner has submitted that the petitioner is facing trial for the alleged offence under Sections 458, 394 and 302 of IPC. He further submitted that on the side of the prosecution, 11 witnesses were examined. He further submitted that P.W.5 and P.W.6 were examined on 06.02.2018. At that time the petitioner's junior counsel could not effectively cross examine both the witnesses. Further, the petitioner wants to examine one Sathya as defence witness and hence the petitioner has filed an application on 18.11.2019, requesting the trial Court to recall P.W.5 and P.W.6 for further cross examination and also permit him to examine the said Sathya as defence witness. The learned Trial Judge has returned the said petition stating that already defence was closed on 25.06.2018, itself. He further submitted that immediately the

petitioner has filed reopen petition and the said petition was also returned by the learned trial Judge. He further submitted that the Trial Judge posted the said case on 26.11.2019 for arguments and judgment. He further submitted that on 26.11.2019, the case was adjourned to 28.11.2019 on the ground that the petitioner has already filed a Criminal Original petition before this Court. He further submitted that on 28.11.2019, the learned trial Judge has directed the the petitioner's counsel to argue the matter and hence he has argued and thereafter the case was posted to 06.12.2019 for judgment. He further submitted that to ensure fair trial, one more opportunity may be given to the petitioner to cross examine P.W.5 and P.W.6. He also relied upon the judgment of the Honourable Supreme Court in 2013 AIR (SC) (Cri) 1746 : AIR (SC) 3081 in the case of Rajaram Prasad Vs. State of Bihar and another, its relevant paragraphs is extracted here under:-

"We find that the factors noted by the trial Court and the conclusion arrived at by it were all appropriate and just, while deciding the application filed under Section 311 Criminal Procedure Code. We do not find any bona fides in the application of the second respondent, while seeking the permission of the Court under Section 311 Criminal Procedure Code for his re-examination by merely alleging that on the earlier occasion he turned hostile under coercion and threat meted out to him at the instance of the appellant and other accused. It was quite apparent that the complaint, which emanated at the instance of the appellant based on the subsequent incident, which took place on 30.05.2007, which resulted in the registration of the FIR in Khizersarai Police Station in case No.78/2007, seem to have weighed with the second respondent to come forward with the present application under Section 311 Criminal Procedure Code, by way of an afterthought. If really there was a threat to his life at the instance of the appellant and the other accused, as rightly noted by the Court below, it was not known as to why there was no immediate reference to such coercion and undue influence meted out against him at the instance of the appellant, when he had every opportunity to mention the same to the learned trial judge or to the police officers or to any prosecution agency. Such an indifferent stance and silence maintained by the second respondent herein and the categorical statement made before the Court below in his evidence as appreciated by the Court

below was in the proper perspective, while rejecting the application of the respondents filed under Section 311 Criminal Procedure Code. In our considered opinion, the trial Court, had the opportunity to observe the demeanour of the second respondent, while tendering evidence which persuaded the trial Court to reach the said conclusion and that deserves more credence while examining the correctness of the said order passed by the trial Court. "

3.Per contra the learned Additional Public Prosecutor has submitted that P.W.5 and P.W.6 were cross examined on 06.02.2018 by the petitioner's junior counsel. He further submitted that after closing prosecution side evidence, the accused was questioned under Section 313 of Cr.P.C and an opportunity was given for examining defence witnesses and finally after hearing both sides arguments, the case was posted to 27.11.2018 for judgment and on that date, the petitioner did not appear and hence the learned trial judge has issued NBW. He further submitted that NBW was executed and the accused was secured and produced before the trial Court and he was remanded to judicial custody on 04.11.2019. He further submitted that even on 04.11.2019, the petitioner did not file any petition to re-call those witnesses. Only on 18.11.2019, he has filed a petition to recall P.W.5 and P.W.6 and also seeking permission of the Court to examine one witness as a defence witness. He further submitted that only with a view to drag on the proceedings, the petitioner has filed the aforesaid petition and therefore he strongly opposed this petition.

4.It is not in dispute that on 06.02.2018, the petitioner's junior counsel had cross examined the witnesses P.W.5 and P.W.6. After closing the prosecution side evidence, the accused was questioned under Section 313 Cr.P.C and thereafter it was posted for defence side evidence, but the petitioner has not examined any defence witness and thereafter hearing both side arguments, the case was posted on 27.11.2018 for pronouncing judgment and that date, the petitioner did not appear. Hence, NBW was issued and after nearly one year i.e on 04.11.2019, the respondent police secured the petitioner by executing the NBW and produced before the Trial Court. On 18.11.2019, the petitioner has filed a petition to recall P.W.5 and P.W.6 stating that his junior Advocate could not effectively cross examine the said witnesses. The aforesaid reason is not a valid reason for recalling the aforesaid witnesses P.W.5 and P.W.6.

5.The decision relied upon by the petitioner will not help the petitioner. In that decision, the Hon'ble Supreme Court referred to several earlier decisions. In one such decision i.e., in Natesha Singh Vs.CBI (State), 2013 (4) Recent Apex Judgment (R.A.J) 95, the Hon'ble Supreme Court has held that the power conferred under Section 311 of Cr.P.C must be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection.

6.The conduct of the petitioner would show that his intention is only drag on the proceedings and hence, this Court does not find any bonafide in the petition filed by the petitioner.

Accordingly, the Criminal Original Petition is dismissed.

Sd/-  
Assistant Registrar(J)

/True Copy/

Sub Assistant Registrar

To

1.The III Additional District and Sessions Judge,  
Salem.

2.The Inspector of Police,  
Yethapur Police Station,  
Salem District.

3.The Public Prosecutor,  
High Court of Madras, Chennai.

+1 cc to M/s.Mario Johnson, Advocate Sr.No.101726

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