

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
Cr1.OP.No.33637 of 2019

Arumugam

... Petitioner/Accused

Vs.

State rep by,
The Inspector of Police,
NIBCID, Salem.
Cr.No.23 of 2017

... Respondent/ Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C, to set aside the order passed in Cr.M.P.No.548 of 2019 in C.C.No.25 of 2017 dated 29.11.2019 on the file of Special Court for E.C.Act Cases, Salem and direct Special Judge for E.C.Act Cases, Salem to reopen and recall P.W.1 for the purpose of cross examination.

For Petitioner : Mr.T.Murugananthan

For Respondent : M.Mohamed Riyaz
Additional Public Prosecutor,

ORDER

This petition has been filed by the accused to set aside the order passed by the Special Court for E.C.Act Cases, Salem in Cr.M.P.No.548 of 2019 in C.C.No.25 of 2017 dated 29.11.2019.

2. The learned counsel for the petitioner has submitted that the petitioner is facing trial for the alleged offence under Section 8(c) and 20(b) (ii)(B) of NDPS Act. He further submitted that according to the prosecution, the petitioner was in possession of 3Kg and 250g of ganja. He further submitted that the petitioner is an innocent person. He was not in possession of any such ganja. On 26.08.2019, P.W.1 viz., V.A.O was examined in chief and on that date, the petitioner's counsel has not come with full preparation and hence he filed a petition to defer the cross examination, but the learned trial judge has dismissed the said petition and recorded as " No cross ". He further submitted that subsequently, the petitioner has filed Cr.M.P.No.548 of 2019 under Section 311 of Cr.P.C to recall P.W.1, but the trial court without giving an opportunity to the petitioner to cross examine the said witness, dismissed the said petition. He further submitted that one more opportunity may be given to

the petitioner to cross examine the said witness, or otherwise it will cause irreparable loss to the petitioner.

3. The learned Additional Public Prosecutor has submitted that P.W.1 came from Dharmapuri District and without valid reasons, the petitioner has filed a petition to defer cross examination and the same was dismissed by the court and thereafter, the petitioner has filed a petition to recall P.W.1 with a view to drag on the proceedings and taking into consideration of the aforesaid facts, the trial court has rightly dismissed the petition and hence, he prayed to dismiss this petition.

4. Taking into consideration the charge which is being faced by the petitioner, with a view to give one more opportunity to the petitioner, this court is inclined to allow this petition. However, the petitioner shall pay a sum of Rs.5,000/- as costs to the District Legal Service Authority, Salem on or before 02.01.2020 and produce the receipt before the trial court, failing which, this petition shall stand dismissed automatically without any further reference to this Court. If the petitioner complied with the aforesaid condition within the aforesaid period, the trial court has to re-call P.W.1 and give an opportunity to cross examine PW1 and on such appearance of the said witness, the petitioner should cross examine the witness on the same day without seeking any further adjournment.

5. With the aforesaid directions, this petition is disposed of.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Vv
To

1. The Special Judge for E.C.Act Cases,
Salem .
2. The Inspector of Police,
NIBCID, Salem.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Murugananthan , Advocate SR.No. 10460

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A.SK(18/12/2019)