



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.O.P.(MD) No.4116 of 2017

Lakshmi

: Petitioner

Versus

The State,
Rep. by Sub-Inspector of Police,
CCIW CD,
Virudhunagar District.
(Crime No.13 of 2003).

: Respondent

Prayer: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records from the learned Judicial Magistrate No.II, Virudhunagar, in Crl.M.P.No.2131 of 2016 in C.C.No.246 of 2004, dated 12.05.2016 and set aside the same and consequently, direct the learned Judicial Magistrate No.II, Virudhunagar, to recall the prosecution witnesses 2 to 11 for cross-examine.

For Petitioner
For Respondent

: Mr.M.Solaisamy
: Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

O R D E R

The instant petition has been filed to set aside the order passed by the learned Judicial Magistrate No.II, Virudhunagar, in Crl.M.P.No.2131 of 2016 in C.C.No.246 of 2004, dated 12.05.2016, thereby dismissing the petitioner's application filed under Section 311 of the Code of Criminal Procedure.

2. The petitioner is the first accused in C.C.No.246 of 2004 on the file of the learned Judicial Magistrate No.II, Virudhunagar. She has been charged with for the offences punishable under Sections 408, 477(A) and 420 of the Indian Penal Code. The allegation against the petitioner is that while she was working as a Secretary in one Elayirampennai Primary Agricultural Co-operative Bank, she forged the signature of one of the fixed depositors in the bank and misappropriated the amount. The occurrence took place in the year 1999, and based on the enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, a crime has been registered against the petitioner,



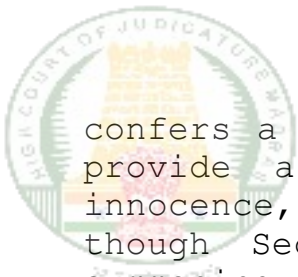
after investigation, a final report has been filed against two accused, and the petitioner is arrayed as the first accused. The learned Judicial Magistrate has taken cognizance of offence and after framing charges, the trial commenced in the year 2010. The prosecution examined 11 witnesses. P.W.2 to P.W.4 were examined on 05.10.2010. P.W.5 and P.W.6 were examined on 09.09.2011 and P.W.7 to P.W.9 were examined on 06.09.2012. P.W.10 was examined on 08.10.2015 and P.W.11 was examined on 19.11.2015. The trial has been prolonged for five years, but, the petitioner did not come forward to cross-examine all the above witnesses. Thereafter, the prosecution side evidence was closed and the accused was also questioned under Section 313 of the Code of Criminal Procedure on 31.12.2015. Subsequently, the petitioner filed an application under Section 311 of the Code of Criminal Procedure to recall P.W.2 to P.W.11 for the purpose of cross-examination. The above application was filed on 03.03.2016. That application has been dismissed by the Trial Court on the ground that there is no valid reason for recalling the witnesses and the application has been filed with a huge delay and there is no proper explanation for that. Now, challenging the order, the present petition has been filed.

3. The learned counsel appearing for the petitioner would contend that at the relevant point of time, some material documents were not available with the petitioner and hence, she could not cross-examine all the witnesses. Only after obtaining the same, the present petition has been filed and there is no *mala fide* intention on the part of the petitioner and an opportunity should be given to her to prove her innocence.

4. Per contra, the learned Additional Public Prosecutor appearing for the respondent would contend that the occurrence took place in the year 1999 and the prosecution witnesses were examined from the year 2010 to 2015 and the petitioner did not come forward to cross-examine none of the prosecution witnesses. Thereafter, the petitioner was also questioned under Section 313 of the Code of Criminal Procedure in the year 2015, and only when the case is posted for arguments, the petition has been filed with a view to drag on the proceedings. The Trial Court has considered the entire materials and rightly dismissed the application and if the petition is allowed, it will cause serious prejudice to the prosecution.

5. I have considered the rival submissions and also perused the materials available on record carefully.

6. Section 311 of the Code of Criminal Procedure has been enacted to enable the Court to find out the truth and render a correct decision. The underlining object under Section 311 is that there must not be a failure of justice on account of mistake of the parties to bring their evidence on record, and the section also



confers a very wide power on the Court on summoning witnesses and provide a fair opportunity to the accused to prove his/her innocence, which is the very object of every fair trial. Even though Section 311 has given a wide power to the Court in summoning witness or to recall or re-examine the witness already examined, but the exercise has to be done with circumspection and the Court is having greater responsibility while exercising the power.

7. In the instant case, the occurrence is said to have taken place in the year 1999. Thereafter, the trial commenced in the year 2010 and the trial has been prolonged for nearly five years, and finally, the prosecution evidence was closed on 19.11.2015, but the petitioner did not cross-examine none of the prosecution witnesses and kept quiet deliberately. Thereafter, the petitioner was questioned under Section 313 of the Code of Criminal Procedure on 31.12.2015, where she denied all the charges. Even, at that time, she did not take any steps to recall the witnesses. Thereafter, in the year 2016, she has filed the present application under Section 311 of the Code of Criminal Procedure for recalling the prosecution witnesses. On a perusal of the petition filed by the petitioner under Section 311 of the Code of Criminal Procedure, it is seen that absolutely, there is no valid reason given for recalling the witnesses and also for the long delay in filing the application. The only reason stated in the petition is at the time of examining the prosecution witnesses, some documents were not available with the petitioner and hence, she could not cross-examine the prosecution witnesses.

8. As stated already, the occurrence took place in the year 1999, now, almost 20 years is over. At this point of time, if the petition is allowed, definitely, it will cause serious prejudice to the prosecution. That apart, the petitioner, being deliberately kept quiet for more than six years, now, at the fag-end of the trial, came out with an application seeking for recall of witnesses without any valid reason whatsoever.

9. The Hon'ble Supreme Court in **Vinod Kumar v. State of Punjab** reported in **2015(1) MLJ (Cr1) 288 (SC)** has held that the witness cannot be recalled for cross-examination after a long span of time and the chief-examination and cross-examination should be conducted preferably on the same day. The relevant portion of the judgment reads as follows:

"41.....Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross examination and the disquieting feature is that the trial courts grant time. The law requires special



reasons to be recorded for grant of time but the same is not taken note of. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurize the witness and to gain over him by adopting all kinds of tactics. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded."

10. Considering the facts and circumstances of the case, this Court is of the view that the petition has been filed only to drag on the proceedings with a *mala fide* intention. The Trial Court, after considering the entire materials, has rightly dismissed the petition, and I find no infirmity or irregularity in the order passed by the Trial Court and the same requires no interference at the hands of this Court.



11. The Criminal Original Petition stands dismissed with the above observation.

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Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

SML

To

1. The Judicial Magistrate No.II,
Virudhunagar.
2. The Sub-Inspector of Police,
CCIW CD,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
Cr1.O.P. (MD) No.4116 of 2017

KS (08.07.2019) 5 P 4 C