



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.09.2019
Pronounced on : 20.09.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) Nos.10858 and 10861 of 2019
and
Crl.M.P.(MD) Nos.6817 and 6819 of 2019

The State rep. by
The Deputy Superintendent of Police,
'Q' Branch CID, Chennai
Karur Q Branch Cr.No.1/2016 ... Petitioner both Ops.

Vs

1.A.Murugan ... Sole Respondent/A5 in Crl.
O.P.No.10858/2019
2.Kala @ Janaki @ Banumathi ... Respondents 1 & 2 in
3.Chandra Crl.O.P.No.10861/2019

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to set aside the order dated 03.07.2019 passed in Cr.M.P.Nos.145 and 179 of 2019 respectively by the Principal District and Sessions Judge, Karur District in allowing the respondents/accused herein to recall the witnesses 1 to 42 and 1 to 61 respectively.

For Petitioner : Mr.K.Suyambulinga Bharathi, G.A.
in both petitions

For Respondents : Mr.A.Jayaramachandran in Crl.O.P.
No.10858/2019

Mr.A.John Vincent for RR1 and 2 in
Crl.O.P.No.10861/2019

C O M M O N O R D E R

These petitions have been filed challenging the common order dated 03.07.2019 made in Cr.M.P.Nos.145 and 179 of 2019 respectively by the Principal District and Sessions Judge, Karur District, thereby allowing the petitions filed by the State to recall the prosecution witnesses 1 to 61.



2.The learned Government Advocate (criminal side) would submit that the trial Court failed to consider the direction issued by this Court in Crl.O.P.(MD) No.12053 of 2018 dated 02.08.2018 and 17118 of 2018 dated 24.10.2018, thereby this Court, directed the trial Court to complete the trial in S.C.No.8 of 2017 on or before 21.12.2018. In fact, the trial Court already dismissed the applications filed by the accused persons in Cr.M.P.No.1102 of 2019 on 18.01.2019, for deferring cross-examination of P.Ws.1 and 2. Without considering the same, against the respondents have filed application to recall the prosecution witnesses and the same were allowed. So far, the prosecution examined P.Ws.1 to 61, in which, most of the witnesses are official witnesses, who are staying outside the district and as such, it is very difficult for the investigating officer to bring them back for cross-examination. Though the trial Court had given enough opportunity to the accused persons for cross examination, they did not cross examine those witnesses.

3.He further submitted that when this Court directed the trial Court to complete the trial within stipulated time and also on the basis of day to day, the trial Court ought not to have allowed the petitions filed by the accused to cross examine the prosecution witnesses. Further, he submitted that the accused persons only with an intention to drag the proceedings, chose to cross examine the prosecution witnesses and to drag the entire proceedings, the present petition has been filed to cross examine the prosecution witnesses. They committed very serious offences under the Unlawful Activities (Prevention) Act. In fact, A1 and A2 are in judicial custody from the date of their arrest. Even then, they did not co-operate for the trial and keep on filing petitions only to drag on the proceedings. In support of his contention, he cited the following decisions of the Hon'ble Supreme Court of India:

1.AIR 2012 Supreme Court 2242 - P.Sanjeeva Rao Vs. State of A.P.

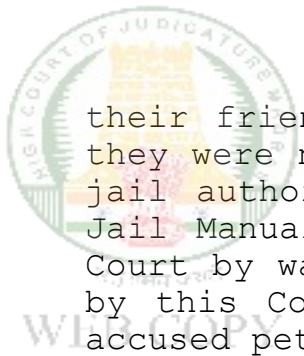
2.(2016) 2 Supreme Court Cases 402 - State (NCT of Delhi) V.Shiv Kumar Yadav

3.(2016) 8 Supreme Court Cases 762 - State of Haryana V. Ram Mehar

4.AIR 2019 Supreme Court 721 - State of Kerala V. Rasheed.

Thus, the learned Government Advocate (criminal side) prayed for allowing the petition.

4.Per contra, both the learned counsel appearing for the respondents/accused submitted that the petitioners/A1 and A2 were arrested and remanded to judicial custody for the offence under Sections 18-A, 18-B, 20 & 38 of Unlawful Activities (Prevention) Act, 1967 r/w 120(B) of I.P.C. Their incarceration/imprisonment from the date of their arrest till today and during their judicial custody, the judicial authorities not permitted them or even to meet



their friends and relatives during the visitors hours. Therefore, they were not able to instruct to conduct their case. In fact, the jail authorities are not acted according with the rules framed in Jail Manual and as such, the accused persons have approached this Court by way of direction petition and only on the direction issued by this Court, the jail authorities provided amenities like other accused petitioners.

5.They further submitted that the petitioners have approached this Court to quash the entire proceedings in Crl.O.P.(MD) No.406 of 2019 and as such, the accused persons are not able to cross examine the witnesses till the disposal of the quash petition, which was ultimately disposed by this Court on 10.01.2019 with a direction to complete the trial and also directed the accused persons to co-operate for trial.

6.They further submitted that the right of cross examination is always available for the accused and if the accused persons were not allowed to cross examine, it would affect their life and liberty. Therefore, considering all these aspects, the trial Court rightly allowed the accused persons to cross examine the prosecution witnesses and hence, they pray for dismissal of the petitions.

7.Heard the learned Government Advocate (criminal side) appearing for the petitioner and the learned respective counsel appearing for the respondents in both the petitions and perused the materials available on record.

8.The respondents in both the petitions are arraigned as A5, A1 and A2 respectively. A1 and A2 were arrested and remanded to judicial custody and they are in still incarceration imprisonment and they are facing the charges for the offences under Sections 18-A, 18-B, 20 & 38 of Unlawful Activities (Prevention) Act, 1967 r/w 120(B) of I.P.C. They have filed separate applications to recall the prosecution witnesses for cross examination on the ground that they were not even allowed to meet their friends and other relatives in order to instruct them to appoint a counsel and also to conduct the trial.

9.In fact, they also requested the Legal Services Authority to appoint a counsel on behalf of them. Therefore, they could not able to cross examine the prosecution witnesses. It is also seen that some of the accused persons have filed quash petition before this Court in Crl.O.p.(MD) No.406 of 2019 and the same was dismissed on 10.01.2019 and till such time, they were not cross examined the prosecution witnesses. The prosecution so far examined 64 witnesses, in which, they examined 63 witnesses as early as on 13.12.2018. While this Court dismissing the quash petition, the prosecution already examined 21 witnesses and they were not examined cross-examined by the accused persons. In fact, no prosecution



10.The judgments cited by the learned Government Advocate (criminal side) were held in different circumstances and on different set of facts. In the case on hand, admittedly, no prosecution witnesses were examined by the accused persons for so many reasons. Therefore, those judgments are not applicable to the fact of the present case, since the trial has commenced only in the year 2018 and though this Court directed the trial Court to complete the trial on or before 21.12.2018, time to time, the time has been extended to complete the trial.

11.That apart, it is seen from the order passed by the trial Court, the entire history of the case has been recorded and considered the circumstances and allowed the petitions filed by the accused persons to cross examine the prosecution witnesses that too on condition that the accused persons would file an undertaking affidavit for cross examine the witnesses on day to day basis. Therefore, this Court finds no infirmity or illegality in the order passed by the trial Court and this petitions are liable to be dismissed.

12.Accordingly, these petitions are dismissed. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Arul

To

- 1.The Deputy Superintendent of Police,
'Q' Branch CID, Chennai, Karur Q Branch.
- 2.The Principal and Sessions Judge, Karur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Order made in
CRL.O.P (MD) Nos.10858 and 10861 of 2019
20.09.2019

JMN(03.10.2019) 4P : 4C