



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2019

CORAM:

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P (MD) .No.13934 of 2019

and

Crl.M.P. (MD) .No.8492 of 2019

Chinnaiyan

... Petitioner/Petitioner/Accused No.1

Vs.

The State rep., by
The Inspector of Police,
Thottiyam Police Station,
Trichy District.
(Crime No.224 of 2011)

... Respondent/Respondent/Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to set aside the order dated 14.08.2019 made in Cr.M.P.No.6 of 2019 in S.C.No.15 of 2013 on the file of the learned Special Court for Trial of Criminal Cases related to Elected Member of Parliament and Members of Legislative Assembly (Principal Sessions Judge), Tiruchirappalli.

For Petitioner	: Mr.M.Jegadesh Pandian
For Respondent	: Mr.S.Chandrasekar
	Additional Public Prosecutor

O R D E R

This petition has been filed seeking to set aside the order made in Cr.M.P.No.6 of 2019 in S.C.No.15 of 2013 passed by the Court of the Sessions Judge, Tiruchirappalli dismissing the petition filed under Section 311 of Cr.P.C seeking to recall P.W.1 to P.W.4 for cross-examination.

2.The brief facts of the case are that the petitioner is A1 in S.C.No.15 of 2013 on the file of the Special Court for trial of criminal cases related to M.Ps and MLAs at Chennai. P.W.1 to P.W.3 were examined in chief on 07.10.2014. P.W.4 was examined in chief on 16.12.2014. As per the direction of this Court, the case was later transferred to the Court of Sessions Judge, Tiruchirappalli. Thereafter, the petitioner has filed a petition on 30.07.2019 under Section 311 Cr.P.C in Cr.M.P.No.6 of 2019 seeking to recall P.W.1 to P.W.4 stating that he has not cross-examined the witnesses.

3.The respondent has filed a counter stating that the petitioner has filed the miscellaneous petition after a lapse of 4-½



years and by this time, the witnesses would have lost their memory.

4.The learned Sessions Judge, taking into consideration the mandate of the Hon'ble Apex Court in the case of **Vinod Kumar Vs., State of Punjab** reported in **(2015) 3 SCC 220** and also relying on various other Judgements, dismissed the said petition on 14.08.2019. Against which, this Criminal Original petition has been filed.

5.The learned counsel for the petitioner would submit that the case was originally pending trial on the file of I Additional Assistant Sessions Judge, Tiruchirappalli and thereafter, the case was transferred to the Principal Sessions Court, Tiruchirappalli and once again, it was transferred to the Special Court at Chennai and thereafter, pursuant to the Administrative order passed by this Court, the case was transferred to the Principal Sessions Court, Tiruchirappalli. Due to the frequent transfers, the petitioner was unable to cross-examine the witnesses and that if a chance is not given to the petitioner to cross-examine, it will amount to a case of no defence causing serious prejudice to the petitioner. He would submit that the petition may be allowed on imposition of cost and terms.

6.The learned Additional Public Prosecutor submits that the witnesses have been examined on 07.10.2014 and 16.12.2014 and the petitioner has filed a petition after 5 years and that the trial Court finding that by this time, the witnesses would have lost their memory, had dismissed the petition.

7.On perusal of the order passed by the trial Court, this Court is of the view that there is no infirmity in the order passed by the trial Court, however, in order to give an opportunity to the petitioner, this Court directed the learned Additional Public Prosecutor to get instructions from the respondent whether the witnesses are available and whether it will be possible for the respondent to produce them before the trial Court for cross-examination.

8.The learned Additional Public Prosecutor, on instructions from the respondent, would submit that the witnesses are members belonging to the same family and are residing at Thottiyam Village and that it will be possible for the respondent to produce them before the trial Court on the next hearing date i.e., 17.12.2019 for cross-examination.

9.In view of the above, this Court is of the opinion that an opportunity may be given to the petitioner in the expedient interest of justice and fair trial to recall the witnesses to be present before the Court below on the next hearing date and the petitioner may be permitted to cross examine them. Accordingly, the respondent is directed to produce the witnesses before the Court below on



17.12.2019 and the petitioner is permitted to cross examine the witnesses subject to the following conditions. The petitioner shall deposit a sum of Rs.5,000/- before the trial Court on or before 11.12.2019 and also file an affidavit of undertaking that the witnesses shall be cross examined on the same day. On such deposit is being made and affidavit of undertaking filed, the learned trial Judge shall intimate the learned Public Prosecutor/respondent to produce the witnesses in the next hearing date i.e., 17.12.2019. The learned counsel for the petitioner shall cross-examine the witnesses on the said date, without fail. The trial Court shall disburse Rs.1,000/- each of the witness and balance amount of Rs.1,000/- shall be paid to the credit of District Legal Service Authority, Tiruchirappalli.

10. With the above directions, the Criminal Original Petitions stands closed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Special Court for Trial of Criminal Cases,
related to Elected Member of Parliament and
Members of Legislative Assembly
(Principal Sessions Judge), Tiruchirappalli.
2. The Inspector of Police,
Thottiyam Police Station, Trichy District.
3. The District Legal Services Authority,
Tiruchirappalli.
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

+1CC TO MR.M.JEGADESH PANDIAN, Advocate Sr. No. 103362

Crl.O.P(MD).No.13934 of 2019
03.12.2019..

SMV(CO)

TR(05.12.2019) 3P 6C