

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.1386 of 2020

Abdul Samadh

...Petitioner

Vs.

1. The State of Tamil Nadu
Rep.by the Inspector of Police
CBCID Kancheepuram District
Kancheepuram

...Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., pleaded to set aside the docket order passed by the learned Judicial Magistrate No.1, Chengalpattu dated 21.11.2019 and also the permission granted by the learned Magistrate No.1 Chengalpattu to treat the petitioner as hostile witness.

For Petitioner : M/s.S.Selvathirumurugan

For Respondent : Mr.S.Karthikeyan

Addl.Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the docket order passed by the learned Judicial Magistrate No.1, Chengalpattu dated 21.11.2019 and also the permission granted by the learned Judicial Magistrate No.1 Chengalpattu to treat the petitioner as hostile witness.

2. The learned counsel for the petitioner submitted that the petitioner is the defacto complainant in C.C.No.399 of 2010 on the the complaint lodged by the petitioner. The respondent completed investigation and filed a final report and the same has been taken cognizance in C.C.No.399 of 2010 for the offences under Sections 341 & 323 of IPC as against the accused persons. The petitioner was examined in chief as PW1 by the prosecution. Unfortunately his evidence was deferred from the statement recorded under Section 161 of Cr.P.C and as such the respondent

herein treated him as hostile and the petitioner was cross examined by the respondent herein. He further submitted that the petitioner never made such a statement which is available on record under Section 161 of Cr.P.C. and the respondent herein completely changed the statement and as such his evidence was not accepted and the petitioner was declared as hostile witness and he was also subjected to cross examination by the prosecution. Thereafter the matter was adjourned for cross examination by the defence side. On 21.11.2019 the petitioner was able to be present before the trial Court and as such the evidence was closed for the reason that the PW1 was not present when the matter was specifically posted for for cross examination with consent of PW1.

3. The learned Additional Public Prosecutor submitted that when PW1 defacto complainant defers from the statement recorded under Section 161 of Cr.P.C naturally the prosecution may request the court concerned to declare him as hostile witness. In the case on hand the evidence of PW1 namely the petitioner herein completely defers from the statement recorded under Section 161 of Cr.P.C. Prosecution requested the trail Court to declare him as hostile witness and he was subjected to cross examination. Accordingly the petitioner was also cross examined and the matter was posted for cross examination of defence, on that date, the petitioner was absent and his evidence was closed.

4. Heard both sides and perused the materials available on record.

5. On perusal of records it is seen that on the complaint lodged by the petitioner, the respondent completed investigation and filed final report and the same has been taken cognizance for the offences under Sections 341 & 323 of IPC in C.C.No.399 of 2010 on the file of the Judicial Magistrate No.I Chengalpattu. The petitioner was examined as PW1 and he deposed extensively on more than four occasions. According to the petitioner his original statement was not recorded by the respondent and the respondent himself recorded the statement under Section 161 of Cr.P.C. to support the accused persons. Therefore his evidence was declared as hostile and he was subjected to cross examination by the prosecution, accordingly the respondent prosecution also cross examined him and when the matter was posted for cross examination of defence side, the petitioner was not able to be present before the trial Court. Now the apprehension of the petitioner is that when the petitioner deposed actually what happened at the time of occurrence, now it was not recorded by the respondent under Section 161 of Cr.P.C and it would also affect the case of the petitioner.

6. Though the petitioner was treated as hostile witness, the trial Court can consider the objection of the petitioner in accordance with law. It is made clear that once the witness turned hostile it does not mean that the trial Court should not take the same for consideration. Further on 20.01.2019 the petitioner was absent for his inconvenience. Therefore the evidence of PW1 stands reopened and he may be subjected to cross examination by the defence. Trial Court is directed to fix the date for cross examination of PW1 by the defence, on the date fixed by the trial Court if the petitioner fails to appear before the trial Court for cross examination by the defence side, the trial Court is directed to proceed with the trial in accordance with law. Further C.C.No.399 is of the year 2010 and directs the trial Court to complete the trial within a period of six months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Inspector of Police
CBCID Kancheepuram District
Kancheepuram
2. The Judicial Magistrate No.1,
Chengalpattu.
3. The Chief Judicial Magistrate,
Kancheepuram.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Selva thirumurugan, Advocate, S.R.No.25364

KS (CO)
KKV/25/08/2020

Cr1.O.P.No.1386 of 2020