

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.01.2020

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THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.Nos.1551, 1553 & 1556 of 2020

and

Crl.M.P.Nos. 979, 980 & 982 of 2020

In Crl.O.P.No. 1551 of 2020

S.Thiayagarajan

... Petitioner /Accused

Vs.

The State rep by
The Deputy Director,
Industrial Safety and Health,
Thiruvottiyur,
Chennai - 600 019.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 04.01.2020 in Crl.M.P.No. 10096 of 2019 in STC No. 102 of 2017 on the file of the Learned Chief Judicial Magistrate, Thiruvallur.

In Crl.O.P.No. 1553 of 2020

S.Thiayagarajan

... Petitioner/Accused

Vs.

The State, Represented by
The Deputy Director,
Industrial Safety and Health,
Thiruvottiyur, Chennai - 600 019.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 04.01.2020 in Crl.M.P.No. 10094 of 2019 in STC No. 103 of 2017 on the file of the Learned Chief Judicial Magistrate, Thiruvallur.

In Crl.O.P.No. 1556 of 2020

K.Subramanian

... Petitioner/Accused

Vs.

The State rep by
The Deputy Director,
Industrial Safety and Health,
Thiruvottiyur,
Chennai - 600 019

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 04.01.2020 in CrI.M.P.No. 10095 of 2019 in STC No. 104 of 2017 on the file of the Learned Chief Judicial Magistrate, Thiruvallur.

For Petitioners : Mr.R.Selvakumar
in all CrI.O.Ps

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor
(in all CrI.O.Ps)

COMMON ORDER

These petitions have been filed to set aside the order passed by the Chief Judicial Magistrate, Thiruvallur in CrI.M.P.Nos.10096, 10094 and 10095 of 2019 in STC Nos.102, 103 and 104 of 2017 dated 04.01.2020 respectively.

2. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

3. The learned counsel for the petitioner has submitted that the petitioner is facing trial for the alleged offences under Section 6(1) Rules 6(1)(2)(3), Section 6(1) Rule 3(5)(b) and Section 32(a) of Factories Act 1948. He further submitted that the PW.1 was examined in Chief in part on 16.11.2017 and thereafter the case was adjourned to 07.12.2017 for continuation of Chief examination and on that date, PW1's chief examination continuation taken in part and again adjourned for chief examination continuation and only on 14.06.2018 chief examination completed and since the P.W.1's chief-examination was taken on three dates, the petitioner has filed a petition to defer the cross-examination. Thereafter, P.W.1 appeared before the Trial Court on 08.08.2019 for cross-examination and on that date, the petitioner has completed cross-examination but certain documents were marked. He further submitted that subsequently on 17.10.2019, D.W.1 was examined on the side of the accused and certain documents were omitted to mark. as Exs.D1 to D5 and with regard to the said documents, PW1 has to be cross examined and hence the petitioner has filed petitions under Section 311 of Cr.P.C in CrI.M.P.Nos.10096, 10094 and 10095 of 2019 before the Trial Court, but the Trial Court without considering the submission made by the petitioner, has dismissed the said petitions by the order dated 04.01.2020. He further submitted

that the Trial Court has recorded finding that the P.W.1 was cross examined by the Accused in length and hence there is no necessity for further cross-examination. He further submitted that the P.W.1 was examined-in-Chief on three different dates and 1½ years, the accused has cross examined the said witnesses on a single date. He further submitted that since the documents were marked through P.Ws were marked documents and with regard to the said document, P.W1 has to be cross examined and hence he prayed to give one more opportunity to the petitioner P.W.1.. further to represent the document which are filed by the accused through P.W.1 and otherwise the petitioner will be put to irreparable loss.

4. Per contra, the learned Additional Public Prosecutor has submitted that since the cases are being tried as summary trial cases, the petitioner cannot repeatedly file petitions to recall the PW1 under the guise of cross-examination. He further submitted that the P.W.1 was retired from service and it is very difficult to secure him. He further submitted that already P.W.1 was cross-examined at length and taking into consideration of the same, the trial court has rightly dismissed the said petitions and in the said order this court need not interfere.

5. Admittedly, the cases are being tried as summary trial cases. In such a case, the petitioner has to cooperate for early disposal. But even though, the cross examination of P.W.1 was done on 08.08.2019, after four months, he has filed petitions U/s. 311 of Cr.P.C in CrI.M.P.Nos.10096, 10094 and 10095 of 2019 to recall the P.W.1 for further examination. So it appears that the petitioner has taken more valuable time before the Trial Court and also before this Court by filing the petitions. At the same time, the interest of the petitioner also to be protected. Hence this court is inclined to give one more opportunity to the petitioner by imposing heavy costs.

6. In the result, these Criminal Original Petitions will be allowed on deposit of Rs.15,000/- towards before the District Legal Service Authority, Thiruvallur District and Rs.5,000/- towards expenses of P.W.1 before the Trial Court on or before 11.02.2020, failing which, these petitions shall stand dismissed without further reference to this court. In case, the petitioner has complied with the aforesaid conditions within the aforesaid period, the trial court is directed to recall P.W.1 and give an opportunity to the petitioner to cross examine the said witness. The petitioner is directed to cross examine the said witness on his appearance without seeking any further adjournment.

7. With the aforesaid directions, these Criminal Original Petitions are disposed of. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (C.S.III)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Thiruvallur District.
2. The Deputy Director,
Industrial Safety and Health,
Thiruvottiyur,
Chennai - 600 019.
3. The Public Prosecutor,
Madras High Court,
Chennai.

+3cc to Mr.R.Selvakumar, Advocate Sr.No.6021 to 6023

AKM/30.01.2020/4P-7C /

CRL.O.P.Nos.1551, 1553 & 1556 of 2020
and
Crl.M.P.Nos. 979, 980 & 982 of 2020

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