

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.6372 of 2020

K.Janakaran

.. Petitioner/Accused

Vs.

State: Inspector of Police,
Vigilance & Anti-Corruption,
Krishnagiri District.

.. Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.6654 of 2019 in Spl.C.C.No.03 of 2015 dated 27.11.2019 on the file before the Chief Judicial Magistrate, Krishnagiri and direct the trial Court to permit the petitioner to cross examine of PW4, PW12 & PW13.

For Petitioner : Mr.M.P.Saravanan

For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor '

ORDER

The petitioner, who is an accused in Special C.C.No.3 of 2015 filed a petition under Section 311 Cr.P.C., in Crl.M.P.No.6654 of 2019, seeking to recall PW4, PW12 and PW13 for cross examination and further cross examination. The trial Court by order dated 27.11.2019 in Crl.M.P.No.6654 of 2019 in Special C.C.No.3 of 2015 dismissed the petition, against which the present petition.

2.The contention of the learned counsel for the petitioner is that the petitioner is the Village Administrative Officer of Suriyanapalli Village. The decoy/PW2 purchased a land in the said village and for the purpose of getting electricity connection, he needed a certificate from VAO. It is alleged that the petitioner for issuance of the certificate, demanded bribe amount on 14.12.2013. Not willing to pay the same, the decoy/PW2 lodged a complaint to PW12. Following the procedures, PW12 with PW3, the accompanying witness and PW4, the other official witness laid a trap. On 14.12.2013 at about 12.00

noon, the decoy/PW12 and the accompanying witness/PW3 met the petitioner in his office, received the certificate and kept the tainted money on the table and thereafter, PW12 along with his trap team entered into the office and trap proceedings were recorded as though the petitioner had demanded and received the bribe money.

3. According to the learned counsel for the petitioner, PW2 gave a false complaint against the petitioner. PW12 without conducting proper investigation to somehow make the trap success had implicated the petitioner. Further on the day of the trap, DW2/Shanmugham and DW3/Jayanthkumar were present in the office which is admitted by PW2 and PW3. This fact has to be confirmed with PW4, the other trap witness and to expose the falsity of PW12, TLO who denies the same.

4. The further contention of the learned counsel for the petitioner that PW4 has not been cross examined. PW12/TLO and PW13/Investigating Officer ought to be cross examined in this regard which fact has not been considered by the trial Court. The trial Court dismissed the petition giving reason that the petitioner has filed the petition belatedly with an intention to drag the trial. Further if the evidence of PW4 has not been tested by way of cross examination, the petitioner would be deprived of his fundamental right and great prejudice would be caused to him. The petitioner undertakes that on the day of appearance of the witnesses, he would cross examine them either physical or through video conference whichever mode is available and adopted without seeking any time, for any reason and to conclude the arguments in this case which is already in progress within a week of the cross examination of the witnesses.

5. The learned Additional Public Prosecutor appearing for the respondent submitted that PW4, PW12 and PW13 were examined on 19.06.2018, 09.01.2019 and 21.01.2019 respectively. PW12 and PW13 were cross examined on the same day. The petitioner has examined himself as DW1 and the other two persons namely Shanmugham and Jayanthkumar were examined as DW2 and DW3 on 18.09.2019. At the stage of arguments, the petitioner to protract the proceedings has filed this petition belatedly.

6. He further submitted that PW4 was examined on 19.06.2018 on which date the petitioner failed to cross examine him which fact has been recorded by the learned trial judge. Despite, sufficient opportunity given to the petitioner, he failed to avail the opportunity and he cannot now claim prejudice and seek recall of witnesses.

7. On considering the rival submissions, it is seen that PW4, who is employed as Superintendent in TNEB Officer, Krishnagiri,

has not been cross examined in this case. As regards PW12/TLO and PW13/Investigating Officer, they have been cross examined in detail. In the interest of justice and the petitioner not to be denied his right of cross examination, further on the undertaking given by the petitioner that he would cross examine the witnesses on the date of their appearance either physical or through video conference, this Court is inclined to recall PW4 alone for the purpose of cross examination. The Additional Public Prosecutor undertook to produce PW4 on 14.07.2020 or any day within short period. Thereafter, within a week of cross examination, the arguments to be completed.

8. In view of the above, this Criminal Original Petition is partly-allowed. The impugned order dated 27.11.2019 in CrI.M.P.No.6654 of 2019 in Special C.C.No.3 of 2015 is set-aside, insofar as the cross examination of PW4 is concerned.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vv2
To

1. The Chief Judicial Magistrate ,
Krishnagiri.
2. The Inspector of Police,
Vigilance & Anti-Corruption,
Krishnagiri District.
3. The Public Prosecutor,
High Court Madras.

सत्यमेव जयते

CrI.O.P.No.6372 of 2020

NR(CO)
RMP(03/09/2020)

WEB COPY