

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl OP.No.27338 of 2019

Narayananasawamy

...Petitioner/Defacto Complainant

.Vs.

1. State rep by
The Inspector of Police
Madurantakam Police Station
Madurantakam

2. A. Mani

3. A. Ranganathan

4. A. Vengatesan

5. A. Balakrishnan

6. A. Namdev

...Respondents/Complainant & Accused Persons

Prayer: Criminal Original Petition filed under Section 482 of Cr.PC praying to set aside the order dated 05.04.2019 passed by the learned Judicial Magistrate at Madurantakam in the application filed U/s. 311 of Cr.P.C. in CMP No. 4565 of 2017 in C.C. No.82 of 2014 by the petitioner herein seeking to re-examine PW1 chief examination in the subsequent date of the proceedings.

For Petitioner : Mr. G. Paul Einstein

For Respondents

For R1 : Ms. S. Thankira
Government Advocate (crl. Side)

For R2, R3, R5 & R6 : Mr. K. Govi Ganesan

For R4 : No appearance

ORDER

Seeking to set aside the order dated 05.04.2019 passed in CMP No.4565/17 in CC No.82 of 2014 on the file of the Judicial Magistrate Court, Maduranthagam, the petitioner/defacto complainant has come forward with the Criminal Original Petition.

2. The petitioner is the defacto complainant. Based on the

complaint preferred by him, it is found that the final report has been laid by the respondent police against the accused persons and the same had been taken on file in CC No.82/14 on the file of the Judicial Magistrate Court, Maduranthagam.

3. After the trial has commenced it is seen that the petitioner/defacto complainant has been examined on 19.10.2016 and the matter stood adjourned for the examination of the further witnesses.

4. At this stage of the matter, it is found that the petitioner has come forward with the petition under Section 311 of Cr.PC in CMP No.4565/17 to re-examine him further. For the same, the reason given by the petitioner is that after his examination on 19.10.2016, when he signed the deposition, he found that the entire contents of his deposition regarding the occurrence had not been properly recorded and despite his endeavour in bringing the same to the knowledge of the court staff, no steps had been taken to rectify the same and hence according to the petitioner, he has been necessitated to prefer the petition under Section 311 of Cr.PC to re-examine him further.

5. The abovesaid petition preferred by the petitioner has been stiffly resisted by the prosecution contending that the petition is not maintainable either in law or on facts and nearly one year after his examination, only on 12.10.2017 with a delay of nearly one year, the petitioner has come forward with the present petition to re-examine him further, and therefore, according to the prosecution only with a view to drag on the trial endlessly, the present petition has been preferred and accordingly sought for the dismissal of the petition.

6. The court below, on a consideration of the contentions put forth by the respective parties, chose to dismiss the petition preferred by the petitioner. Impugning the same, the present Criminal Original Petition has been laid by the petitioner.

7. As averred in the petition itself, it is noted that the petitioner has been examined as P.W.1 on 19.10.2016 and the petitioner has signed the deposition on the same date. Now according to the petitioner, at the time of signing the deposition he had noted certain discrepancies i.e. his testimony regarding the occurrence has not been properly recorded and despite he having brought the same to the knowledge of the court staff, as no proper steps had been taken to rectify the same, he had been necessitated to file the petition to re-examine him further to rectify the abovesaid defects.

8. However, on a perusal of the abovesaid reason given by the petitioner, it is seen that the same is highly unacceptable and not trust worthy. When according to the petitioner himself he has signed the deposition on 19.10.2016 after reading the contents of the same, if really, as now averred by the petitioner, the testimony had not been properly recorded by the concerned court, the petitioner would have endeavoured to bring the same to the notice of the presiding officer of the concerned court immediately. On the other hand, the petitioner has not taken any steps to bring the same to the knowledge of the presiding officer. As to why he has not brought the same to the knowledge of the presiding officer, no proper explanation is forthcoming on the side of the petitioner.

9. Though the petitioner would claim that he had brought the same to the knowledge of the court staff, however, to which court staff he had apprised the same, with reference to the abovesaid facts, no clearcut facts are forthcoming. If really the testimony of the petitioner had not been properly recorded by the concerned court, atleast if not on the date of the recording of his testimony, immediately thereafter, the petitioner should have endeavoured to bring the same to the notice of the presiding officer and taken earnest steps with reference to the same. On the other hand, it is found that no follow up action has been taken by the petitioner with reference to the abovesaid cause immediately after the recording of his testimony on 19.10.2016. On the other hand, he has chosen to levy the petition under Section 311 of Cr.PC seeking to re-examine him further only on 12.10.2017, nearly one year after his testimony had been recorded. Therefore, as rightly held by the court below, the petitioner had been keeping mum for nearly one year and his conduct in lodging the petition nearly one year after the recording of his testimony would only expose his intention to drag on the trial proceedings endlessly with a view to avoid the culmination of the trial one way or the other. In such view of the matter, it is noted that the court below had rightly, for proper reasons, dismissed the petition preferred by the petitioner seeking permission to re-examine him.

10. In the light of the abovesaid factors, I do not find any error or infirmity in the impugned order passed by the court below. In conclusion, the Criminal Original Petition is dismissed.

s/d

Assistant Registrar

True Copy

Sub-Assistant Registrar

bga

Copy to

1. The Judicial Magistrate, Madurantakam

2. State rep by
The Inspector of Police
Madurantakam Police Station
Madurantakam

3. The Public Prosecutor, High Court, Madras.

+cc to Mr.Govi Ganesan, Advocate, SR.No.30297/2020

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MR (CO)
RN (09/11/2020)



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