



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CrI.O.P.(MD)Nos.15177, 14487, 14548 and 14570 of 2020

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Rajendrapandian, M/59,
S/o.Karuppaiah

... Petitioner in all cases/
Petitioner/Accused No.1
vs.

The State Represented by
Inspector of Police,
C.C.I.W. C.ID.,
Sivagangai District,
In Cr.No.7 of 2005

... Respondent in all cases/
Petitioner/Complainant

CrI.O.P.(MD)No.15177 of 2020 filed under Section 482 of Cr.P.C, to set aside the order passed in CrI.M.P(MD)No.7582 of 2018 in C.C.No.54 of 2009 on the file of the learned Judicial Magistrate No.II, Sivagangai, Sivagangai District, dated 31.07.2019 and consequently direct the aforesaid learned Judicial Magistrate to recall the prosecution witness namely, PW-1 to PW-9 for the purpose of cross examination.

CrI.O.P.(MD)Nos.14487, 14548 and 14570 of 2020 filed under Section 482 of Cr.P.C, to set aside the order passed in CrI.M.P (MD)Nos.7583, 7581 and 7584 of 2019 in C.C.Nos.52, 53 and 55 of 2009 respectively on the file of the learned Judicial Magistrate No.II, Sivagangai, Sivagangai District, dated 31.07.2019 and consequently direct the aforesaid learned Judicial Magistrate to recall the prosecution witness namely, PW-1 to PW-8 for the purpose of cross examination.

For Petitioner : Mrs.S.Ragaventhre

For Respondent : Mr.V.Neelakandan,
Additional Public Prosecutor

COMMON ORDER

The present petitions have been filed to set aside the order passed in CrI.M.P(MD)Nos.7582 of 2018 and 7583, 7581 and 7584 of 2019 in C.C.Nos.54, 52, 53 and 55 of 2009 on the file of the learned Judicial Magistrate No.II, Sivagangai, Sivagangai District, dated 31.07.2019 and consequently direct the aforesaid learned Judicial Magistrate to recall the prosecution witness namely, PW1 to PW9 in CrI.O.P.15177/2020 and PW-1 to PW-8 in other cases, for the purpose of cross examination.



2.The learned counsel for the petitioner would state that the petitioner has been charge sheeted by the respondent/police for the offences under Sections 467, 468, 471 and 420 IPC on the allegation that when the petitioner was working as a Secretary in the Co-operative Society, he committed irregularity in disbursal of the loan resulting in monetary loss to the society. By segregating the period of lending loans into four, separately four charge sheets have been filed and the same have been taken cognizance by the learned Magistrate in C.C.Nos.52 to 55 of 2009. He would further state that after the examination of prosecution witnesses, the petitioner/accused filed a petition for recalling those witnesses for cross examination stating that the trial has commenced in 2015, but the respondent/police had not brought the witnesses continuously on the dates of hearing and the attendance of the witnesses in the court itself was used to be informed to the petitioner's counsel only after arrival of such witnesses and therefore, the petitioner could not give instructions to his counsel for cross examination of those witnesses. Therefore, the petitioner filed petitions under Section 311 Cr.P.C in Cr.M.P.Nos.7582/2018, 7583, 7581 and 7584/2019 for recalling of the prosecution witnesses and the learned Magistrate by order dated 31.07.2019 rejected the said petitions. According to the petitioner, none of the prosecution witnesses were subjected to cross examination and during the period of occurrence, the said witnesses were not even in the post through them the disbursal of loan is stated to have been given and if their evidence are allowed to be tested without cross examining them, it would be dangerous to the petitioner to establish his innocence. Thus, he would pray for recalling PW1 to PW9 in C.C.No.54 of 2009 and PW1 to PW8 in C.C.Nos.52, 53 and 55 of 2009.

3.Though the petitioner has filed these petitions for realling PW1 to PW9 in C.C.No.54 of 2009 and PW1 to PW8 in C.C.Nos.52, 53 and 55 of 2009, today when the matter is taken up for hearing, the learned counsel for the petitioner has confined the prayer only to recall PW8 in all the cases.

4.The learned Additional Public Prosecutor would state that the cases are of the year 2009 and the prosecution witnesses were examined from 29.04.2015 and the cases are now posted for examination of further witnesses. Though sufficient opportunities were given by the Court to cross examine the prosecution witnesses, in order to drag on the proceedings, the petitioner wantonly did not cross examine them and the learned Judge holding that the petitioner has not given any valid reason to substantiate his prayer, has rightly dismissed the petitions for recall which do not require interference by this Court.



5. Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondent.

6. Perusal of the impugned orders passed by the learned Judge shows that cases have been taken cognizance on 14.09.2009 and the petitioner was questioned as to the charges on 16.09.2009 and PW1 and PW2 were examined on 29.04.2015 and PW3 and PW4 were examined on 04.09.2015 on which date, a representation of 'no cross today' has been made on the side of the petitioner. Thereafter, PW5 to PW7 were examined on 27.07.2016 and due to boycott of advocates, witnesses were not cross examined. Thereafter, on 03.07.2019, PW8 was examined and though sufficient opportunities were given by the Court to cross examine the witnesses, since the petitioner failed to cross examine them, the cross examination was closed by the Court. The learned Judge held that the offences are said to have been committed during 2002-2003 and the witnesses examined on the side of the prosecution are official witnesses who enquired about the alleged misappropriation by the petitioner during various period and they are from different places and the petitioner has not given any valid reason to substantiate his prayer to recall. Therefore, the learned Judge, relying upon the judgment of the Hon'ble Supreme Court reported in **2015 (1) Scale 542, Vinothkumar vs. State of Punjab**, wherein, the Apex Court held that it is not appreciable to call a witness for cross examination after such a long span of time and it is imperative if the examination in chief is over, the cross examination should be completed on the same day, dismissed the recall petitions.

7. Though the petitioner has filed these petitions for reallling PW1 to PW9 in C.C.No.54 of 2009 and PW1 to PW8 in C.C.Nos.52, 53 and 55 of 2009, now the learned counsel for the petitioner has confined the prayer only to recall PW8 in all the cases, who is stated to have conducted enquiry under Section 81 of the Co-operative Societies Act. In my opinion, since the offence of misappropriation is alleged against the petitioner, without cross examining the enquiry officer/PW8, the petitioner cannot establish his case. Therefore, ends of justice would be met by giving one more chance to the petitioner to cross examine PW8.

8. Accordingly, the orders impugned in Cr.M.P.Nos.7582/2018, 7583, 7581 and 7584/2019 in C.C.Nos.52 to 55 of 2009, dated 31.07.2019, on the file of the learned Judicial Magistrate-II, Sivagangai, are set aside and the petitioner shall cross examine PW8 in all the cases, on the date which shall be fixed by the trial Court. If the petitioner failed to cross examine PW8 in all the cases on the particular date, then the trial Court shall proceed with the matter in accordance with law.



9.With the above directions, all the Criminal Original Petitions are disposed of.

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Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

bala/rmk

To

1)The Judicial Magistrate No.II,
Sivagangai,
Sivagangai District.

2)The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COMMON ORDER MADE IN
Cr1.O.P.(MD)Nos.15177, 14487, 14548
and 14570 of 2020
DATED : 21.12.2020

KM (10.03.2021) 4P 3C