

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.122 of 2021 and Crl.M.P.No.2430 of 2021
Crl.R.C.No.124 of 2021 and Crl.M.P.No.2432 of 2021

Seenu @ Srinivasan ... Petitioner in both cases
Vs.

State represented by the
Inspector of Police,
CBCID (Counterfeit Currency Wing),
Coimbatore in Cr.No.3/2004. ... Respondent in both cases

PRAYER in Crl.R.C.No.122 of 2021: Criminal Revision Petition
filed under Sections 397 r/w 401 of Criminal Procedure Code, to
call for records of the order dated 02.12.2020 passed in
Crl.M.P.No.113 of 2019 in C.A.No.8 of 2013 on the file of the I
Additional District and Sessions Judge, Erode and set-aside the
same and allow the Criminal revision petition.

PRAYER in Crl.R.C.No.124 of 2021: Criminal Revision Petition
filed under Sections 397 r/w 401 of Criminal Procedure Code, to
call for records of the order dated 02.12.2020 passed in
Crl.M.P.No.112 of 2019 in C.A.No.8 of 2013 on the file of the I
Additional District and Sessions Judge, Erode and set-aside the
same and allow the Criminal revision petition.

In both cases:

For Petitioner : Mr.R.Selvakumar

For Respondent : Mr.K.Madhan
Government Advocate [Crl. Side]

COMMON ORDER

The respondent Police have registered a case in Crime No.3
of 2004 against the petitioner/A1 and six others for offence
under Sections 120-B IPC r/w 489A to D IPC all r/w 109 IPC.
After completion of investigation, the respondent Police have
laid a charge sheet and the same was taken on file as S.C.No.146
of 2008 by the learned I Additional Subordinate Judge, Erode.
After completion of trial, the petitioner along with other

accused were convicted, by judgment, dated 04.02.2013, against which, the petitioner preferred an appeal before the learned I Additional District and Sessions Judge, Erode in C.A.No.8 of 2013. During the pendency of the appeal, the petitioner has filed a petition in Crl.M.P.No.113 of 2019 in C.A.No.8 of 2013 under Section 391 Cr.P.C., seeking to permit him to cross examine PW.3 and PW.13 in S.C.No.146 of 2008 and for which, he filed another petition in Crl.M.P.No.112 of 2019 in C.A.No.8 of 2013 to reopen C.A.No.8 of 2013. Both the petitions were dismissed on 02.12.2020 by the learned I Additional District and Sessions Judge, Erode. Challenging the same, the petitioner/A1 is before this Court.

2.The learned counsel for the petitioner would submit that since PW.3 and PW.13 were not cross examined by the petitioner, he has filed two petitions for reopen and recall and the same were dismissed by the lower appellate Court. The learned counsel would further submit that no opportunity was given to the petitioner for substantial justice and fair trial and hence one more opportunity must be given to the petitioner. The fair trial to be concluded by giving fair opportunity to cross examine the prosecution witnesses and to put forth his defence through the prosecution witnesses during the cross examination. The accused need not enter into the witness box and establish his defence and disprove the case of the prosecution, he can prove his defence through cross examination by preponderance of probability. Therefore, the failure of cross examination of one of the witness would prejudice to the case of the defence. The Court below failed to consider the fundamental criminal jurisprudence that the accused should be given all opportunities up to his satisfaction to prove his innocence. The prosecution has to prove its case beyond all reasonable doubt and the defence can be established even through the cross examination of the prosecution witnesses. Therefore, the orders passed by the Court below is liable to be set aside.

3.Mr.K.Madhan, learned Government Advocate (Crl. Side) appearing for the respondent Police would submit that sufficient opportunity was given to the defence counsel to cross examine the prosecution witnesses during trial. Though the defence counsel cross examined the other witnesses adduced by the prosecution, he purposefully failed to cross examine PW.3 alone. Eventhough he sought permission to cross examine PW.3 and PW.13, subsequently PW.13 was recalled and cross examined and only PW.3 alone left. Despite giving sufficient opportunity, the defence counsel failed to utilize the same. The lower appellate Court, by considering all the materials, rightly dismissed the petition, which need not be interfered with.

4. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing on behalf of the respondent Police and perused the materials available on record.

5. It is not in dispute that the revisional jurisdiction of this Court is very limited, however to ensure the substantial justice, the Court to give one more opportunity to the defence counsel to cross examine the witnesses of the prosecution. However, despite sufficient opportunity was given to the defence counsel, he did not utilize the same. Therefore, the lower appellate Court rightly dismissed the petitions. In order to give one more opportunity and to ensure fair trial and substantial justice, this Court is inclined to allow the criminal revisions.

6. In view of the above, the orders, dated 02.12.2020 in Crl.M.P.Nos.112 & 113 of 2019 in C.A.No.8 of 2013 passed by the learned I Additional District and Sessions Judge, Erode, is set aside.

7. The petitioner alone is permitted to recall and cross examine PW.3. Since the petitioner was already given sufficient opportunity and he failed to utilize the same, so, he has to bare with cost. However, the respondent is a State and the prosecution, the petitioner is directed to deposit a sum of Rs.1,00,000/- (Rupees one lakh only) to the credit of Corona Relief Fund on or before 12.03.2021. After credit of the payment, the petitioner shall file the receipt before the lower appellate Court on or before 15.03.2021. After receiving the payment receipt, the learned I Additional District and Sessions Judge, Erode/lower appellate court is directed to give only one opportunity to the petitioner to cross examine PW.3 and complete the proceedings on or before 31.03.2021 in the manner known to law, since only one witness is to be cross examined.

8. In the result, these Criminal Revisions are allowed with the above directions. Consequently, the connected Miscellaneous Petitions are closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

To

1.The I Additional District and Sessions Judge,
Erode.

2.The Inspector of Police,
CBCID (Counterfeit Currency Wing),
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.R.Selvakumar, Advocate sr 13930.

Crl.R.C.Nos.122 & 124 of 2021

RGN (CO)
SP (08/03/2021)



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