

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 02.03.2021
CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH
Crl.O.P.No.2909 of 2021

1. M/s.Siva Emu Farms,
Represented by Sivasenapathy
Door No.3 / 280, Rangapalayam,
Nachipalayam Post,
Tiruppur.
 2. M/s.Siva Agri Polutury Farms,
Represented by Sivasenapathy
Door No.3 / 286, Rangapalayam,
Nachipalayam Post,
Tiruppur.
 3. M/s.Siva Land Developers,
Represented by Sivasenapathy
No.1, Sakthidevi Complex,
Near Old Bus Stop,
Dharapuram Road,
Tiruppur.
 4. Sivasenapathy
 5. Mohanapriya Dharshini
 6. Padhmavathy ... Petitioners/Petitioners
- Vs.
1. State Rep. by
The Deputy Superintendent of Police,
EOW II, Coimbatore. ... Respondent/Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 12.02.2021 made in Crl.M.P.No.1434 of 2020 in C.C.No.30 of 2013 on the file of Special Judge, Special Court under TNPID Act, Coimbatore by allowing the present criminal original petition.

For Petitioners: Mr.B.Kumarasamy

For Respondent : Mr.M.Mohammed Riyaz
Additional Public Prosecutor

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioners under Section 311 Cr.P.C. to recall certain witnesses for the purpose of cross examination.

2.The petitioners are facing trial before the Court below for offences under Sections 120(b) and 420 IPC and Section 5 of the Tamil Nadu Protection of Interest of Depositors (in financial establishments) Act, 1997. The prosecution had examined nearly 346 witnesses and the case was at the stage of examination of PW347 and PW348 who are the Investigating Officers in this case. At that stage, the petitioners have chosen to file an application under Section 311 Cr.P.C to recall a large number of witnesses for cross examination. The Court below dismissed the application and aggrieved by the same, the present petition has been filed before this Court.

3.When the matter came up for hearing on 25.02.2021, this Court expressed its opinion that this Court is not inclined to entertain this petition for recalling so many witnesses for cross examination and directed the learned counsel for the petitioners to take instructions from the petitioners and choose the important witnesses whom they want to recall and cross examine.

4.When the matter is taken up for hearing today, a memo has been filed by the petitioners and the petitioners have indicated the witnesses whom they seek to recall for cross examination. For proper appreciation, the relevant portion in the memo is extracted hereunder:

It is submitted that though the present petitioners sought to recall many of the prosecution witnesses, now the petitioners restricted their claim to recall the following witnesses. PW.3, 12, 15, 20, 26, 31, 40, 52, 55, 57, 65, 66, 73, 75, 80, 86, 90, 92, 99, 102, 105, 107, 110, 115, 120, 125, 128, 145, 153, 160, 170, 175, 184, 190, 200, 201, 230, 240, 250, 260, 270, 280, 282, 290, 292, 300, 310, 320, 330 & 338.

5.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondent.

6.A reading of the order passed by the Court below shows that the Court below has given cogent reasons for dismissing the application filed under Section 311 Cr.P.C. It seems that the

petitioners have filed various applications from time to time under Section 311 Cr.P.C. to recall certain witnesses for cross examination and the same was also allowed. The petitioners seem to be recalling the witnesses to whom they have settled the deposit money and other witnesses have not been recalled in the case. Ultimately, the present application came to be filed to recall a large number of witnesses for cross examination.

7.The learned counsel for the petitioners submitted that apart from contesting the case, the petitioners are making attempts to settle the depositors and the matter was even referred to Lok Adalat for settlement of some of the depositors.

8.Taking into consideration the facts and circumstances of the case and also of the fact that the petitioners are facing serious charges, this Court is inclined to modify the order passed by the Court below and permit the petitioners to recall some of the witnesses indicated in the memo, which has been extracted *supra*. However this Court wants to impose stringent conditions while partly allowing this petition.

9.In the result, this criminal original petition is partly allowed with the following directions:

- a) The petitioners are permitted to recall PW.3, 12, 15, 20, 26, 31, 40, 52, 55, 57, 65, 66, 73, 75, 80, 86, 90, 92, 99, 102, 105, 107, 110, 115, 120, 125, 128, 145, 153, 160, 170, 175, 184, 190, 200, 201, 230, 240, 250, 260, 270, 280, 282, 290, 292, 300, 310, 320, 330 & 338.
- b) Each of these witnesses shall be paid cost of 25% of the principal amount that was deposited by them with the financial establishment.
- c) This cost shall be deposited before the Court below on or before 26.03.2021 and a memo shall be filed before the Court below on compliance of the condition, on 29.03.2021.
- d) On such payment of cost, the Court below shall recall the witnesses mentioned in Clause (a) for cross-examination by the petitioners and a date shall be fixed for their appearance.
- e) The petitioners shall cross examine the witnesses on the date of their appearance and the cross examination shall be completed on the same day. If for any reasons, the petitioners fail to cross-examine these witnesses on the date of their appearance, the petitioners shall forfeit their right to recall the witnesses in future.

f) If the petitioners fail to deposit the cost as directed by this Court, the order passed by the Court below in Crl.M.P.No.1434 of 2020, dated 12.02.2021 shall stand revived and

g) It is also made clear that the petitioners will cross examine all the other prosecution witnesses on the same day they are examined in-chief. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assitant registrar

To

1. The Special Judge, Special Court under TNPID Act, Coimbatore.
2. The Deputy Superintendent of Police, EOW II, Coimbatore.
3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.B.Kumaraswamy, Advocate Sr.No.12847

AKM/4.3.21 /4P-5C/

Crl.O.P.No.2909 of 2021
02.03.2021

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