

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.5072 of 2021

and

Crl.M.P.No.3232 of 2021

P.Devaraj

... Petitioner

Vs.

State Rep. by

The Deputy Superintendent of Police,
Economic Offence Wing II Unit,
Namakkal District.

... Respondent

Common Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order made in CMP No.833 of 2020 dated 22.10.2020 in C.C.No.27 of 2020 on the file of the Special Judge, Special Court under Tamil Nadu Protection of Interest, Depositors Act, Coimbatore.

For Petitioner : Mr.G.Murugendran

For Respondent : Mr.M.Mohammed Riyaz

Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 Cr.P.C. to recall PW-1 to PW-511 for cross-examination.

2.The petitioner is facing trial before the Court below for offence under Sections 120(b), 406 and 520 IPC and Section 5 of the TNPID Act. The petitioner has been arrayed as A2. The prosecution had examined 511 witnesses and none of these witnesses were cross examined by the petitioner. The petitioner filed application under Section 311 Cr.P.C to recall PW-1 to PW-511 for cross examination. The Court below dismissed the application filed by the petitioner and aggrieved by the same the present petition has been filed before this Court.

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

4.This Court has carefully considered the order passed by the Court below. It is seen from records that the evidence on

the side of the prosecution commenced in the year 2015 and it got completed with the evidence of PW-511 in the year 2019. Thereafter, the accused persons were questioned under Section 313 Cr.P.C on 20.09.2019. The case was posted for defence evidence from then on. While so, the petitioner has filed an application under Section 311 Cr.P.C to recall PW-1 to PW-511 for cross examination.

5. In the considered view of this Court, this Court does not find any illegality or infirmity in the order passed by the Court below. The Court below has given cogent reasons and the Court below also took into consideration the earlier orders are passed. It is relevant to mention here that A4 approached this Court and filed Crl.O.P.No.18372 of 2020 for a similar prayer. This Court did not find any merits to entertain the petition. Ultimately, A4 confined himself to cross examine the Investigation Officer viz., PW-509 and PW-511. This Court permitted A4 to recall these two witnesses for cross examination. This Court is in complete agreement with the reasons assigned by the learned judge while disposing of Crl.O.P.No.18372 of 2020 by an order dated 21.12.2020.

6. The learned counsel for the petitioner requested this Court to permit the petitioner to at least recall the complainant viz., PW1 and also permit the petitioner to recall PW-509 and PW-511 for cross-examination. The learned counsel submitted that the petitioner is facing serious charges and he is also one of the Director of the Company and there was no intention to delay the trial by not cross examining the witnesses and every attempt was made to settle the depositors in this case.

7. Taking into consideration the facts and circumstances of the case and also the request made by the learned counsel for the petitioner, the order passed by the Court below is modified to the extent that the application filed by the petitioner under Section 311 Cr.P.C. is allowed insofar as PW-1, PW-509 and PW-511 are concerned. Insofar as all the other witnesses, the order passed by the Court below is sustained. The Court below is directed to recall PW-1, PW-509 and PW-511 and fix a date for the cross examination. The petitioner shall pay a cost of Rs.5000/- to PW-1 and a cost of Rs.2500/- each to PW-509 and PW-511 on the date of their appearance. The petitioner shall cross examine these witnesses on the date of their appearance and the cross examination shall be completed on the same day. If for any reasons, the petitioner fails to cross-examine these witnesses on the date of their appearance, the petitioner will forfeit his right to recall the witnesses in future.

8. This Criminal Original Petition is partly allowed to the

extent indicated here in above and there shall be a direction to the Court below to complete the proceedings in C.C.No.27 of 2020, within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Special Judge,
Special Court under Tamil Nadu Protection of Interest,
Depositors Act,
Coimbatore.
2. The Deputy Superintendent of Police,
Economic Offence Wing II Unit,
Namakkal District.
3. The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.G.Murugendran, Advocate, S.R.No. 15951

CrI.O.P.No.5072 of 2021
and CrI.M.P.Nos.3232 of 2021

CP(CO)
GN(29/06/2021)

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