

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.5720 of 2021
and
CrI.MP.No.3682 of 2021

M.Kumar Petitioner/Accused-7

Vs.

State Rep.by
Deputy Superintendent of Police,
Economic Offence Wing II Unit,
Coimbatore District. Respondent/Complainant

Prayer: This Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the returned docket order dt.17.02.2021 made in unnumbered CMP by the Special Judge, Special Court under TNPID Act, Coimbatore, consequently direct the Special Judge, Special Court under TNPID Act, Coimbatore to take on file of the unnumbered CMP to recall PW-1 to PW-78.

For Petitioner : Mr.G.Murugendran
For Respondent : Mr.C.Raghavan
Government Advocate

ORDER

This Criminal Original Petition has been filed challenging the docket order passed by the Court below refusing to entertain the application filed by the petitioner under Section 311 of Cr.P.C., to recall PW-1 to PW-78, for cross examination on payment of cost.

2.The petitioner who has been arrayed as A-7 is facing trial before the Court below for an offence under Section 120 (b), 406, 420 IPC and Section 5 of TNPID Act, 1997. In this case, the final report was originally filed against A-1 to A-5. The charges were framed and the trial was conducted and PW-1 to PW-78 were examined on the side of the prosecution. While so,

an additional charge sheet came to be filed by adding two more accused persons and showing them as absconding accused and by virtue of this additional charge sheet, the petitioner was added as A-7 in this case.

3.As stated above, the prosecution had examined 78 witnesses and the prosecution evidence was closed on 05.08.2019 and the accused persons were questioned under Section 313 of Cr.P.C., on 26.08.2019. Thereafter, the case was posted for defense side evidence and ultimately the case reached the stage of final arguments on 05.09.2019.

4.The petitioner filed an application under Section 311 of Cr.P.C., to recall PW-1 to PW-78 for cross examination. This application was entertained in CMP.No.2838 of 2019 and the Court below allowed the application by an order dated 27.02.2020, by imposing a condition to the effect that the petitioner should pay a cost of Rs.2500/- to each of the witnesses on or before 24.03.2020, failing which the petition will stand automatically dismissed.

5.The petitioner aggrieved by the condition imposed by the Court below filed Crl.OP.No.18249 of 2020, before this Court and sought for the modification of the order. This Court after considering the facts and circumstances of the case, refused to modify the condition and the criminal original petition was dismissed by an order dated 20.11.2020.

6.The petitioner thereafter approached the Court below and filed yet another application under Section 311 of Cr.P.C., to recall PW-1 to PW-78 for cross examination and the petitioner also agreed to pay the cost. This application was not entertained by the Court below. Aggrieved by the same, the present criminal original petition has been filed before this Court.

7.Heard Mr.C.Murugendran, learned counsel for the petitioner and Mr.C.Raghavan, learned Government Advocate appearing on behalf of the respondent.

8.When the matter came up for hearing, this Court directed the learned counsel for the petitioner to chose the important witnesses from among the 78 witnesses examined on the side of the prosecution. The learned counsel for the petitioner filed a memo by indicating the witnesses whom the petitioner wants to cross examine in this case. The learned counsel submitted that the cost imposed by the Court below will also be paid to these witnesses.

9.The learned Government Advocate appearing on behalf of the respondent vehemently objected to the request made by the petitioner and submitted that the petitioner is successfully dragging on this case and a case which was instituted in the year 2013, is still pending and the application came to be filed only at the time when the case was at the stage of final arguments. The learned Government Advocate therefore pleaded for the dismissal of this petition and also for fixing a time limit for the completion of the proceedings.

10.This Court has carefully considered the submissions made on either side and the materials available on record.

11.In the present case, the petitioner came into the picture only after 78 witnesses were examined on the side of the prosecution. The petitioner was not an accused when the final report was filed and he has been added as an accused only based on the materials collected in the course of trial.

12.In view of the above, the petitioner has to be given an opportunity to cross examine the witnesses. It is true that the Court below had allowed the application filed by the petitioner by imposing cost. The petitioner thought that the Court below has imposed an onerous condition by directing the petitioner to deposit a sum of Rs.2500/- to each of the witnesses. This plea of the petitioner was not accepted by this Court and the petition filed before this Court seeking for modification of the order passed by the Court below, was not entertained by this Court.

13.The petitioner therefore does not have any other alternative except to pay the cost to the witnesses who are sought to be recalled for cross examination. In the meantime, the time fixed by the Court below for deposit of the cost expired and as a result of the same, the application also stood automatically dismissed. The petitioner was not able to immediately workout his remedy due to the intervening pandemic situation.

14.In the considered view of this Court, the petitioner must be given an opportunity to cross examine the witnesses whom the petitioner has chosen by way of filing a memo before this Court. It goes without saying that the petitioner will have to pay the cost of Rs.2500/- to each of the witnesses as directed by the Court below.

15.For the foregoing reasons, this criminal original petition is allowed and the petitioner is permitted to recall PW-1,3,5,7,9,12,13,15,19,23,27,31,35,43,45,50,53,54,57,60,61,64,68,69 70,71,72,73,74,75,76,77 and PW-78 for cross examination.

The petitioner shall deposit the cost of Rs.2500/- to each of the witnesses on or before 08.04.2021. A memo shall be filed before the court below on 09.04.2021, reporting compliance of the condition imposed by this Court. The Court below thereafter shall fix the date for the appearance of the above said witnesses and they shall be cross examined on the same day they appear before the Court. If for any reason, the petitioner fails to cross examine any of the witnesses on the date of their appearance, the petitioner will forfeit his right to recall the concerned witness in future. If the petitioner fails to deposit the cost within the time stipulated by this Court, the default clause will come into operation and the main application filed by the petitioner to recall the witnesses will stand automatically dismissed. The Court below is directed to complete the proceedings in C.C.No.12 of 2013, within a period of three months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Special Judge,
Special Court under TNPID Act,
Coimbatore.
2. The Deputy Superintendent of Police,
Economic Offence Wing II Unit,
Coimbatore District.
3. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.A.Murugendran, Advocate, S.R.No.19324

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Cr1.MP.No.3682 of 2021

PCH(CO)
TE (19/04/2021)