

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.04.2021

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THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

Crl.O.P.No.7006 of 2021

Raman

.. Petitioner

Vs.

State rep by
The Inspector of Police,
Vigilance & Anti-corruption
Krishnagiri District.

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to set aside the order passed in Crl.M.P No.146 of 2020 in Spl.C.C No.25 of 2020 dated 22.10.2020 on the file of the Chief Judicial Magistrate, Krishnagiri and direct the trial Court to permit the petitioner to cross examine PW2 to PW6, PW8 & PW14.

For Petitioner : Mr.M.P.Saravanan

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 of Cr.P.C., wherein the petitioner had sought for recalling the witnesses PW2 to PW6, PW8 & PW14 for cross-examination.

2. The learned counsel for the petitioner would submit that the petitioner is facing trial before the Court below for the offences under Sections 7 & 13(2) r/w 13(1) PC Act. PW1 was examined-in-chief on 20.03.2012 and on the same day, he was cross examined by the petitioner's previous counsel. Subsequently, PW2 was examined in chief on 21.01.2014 and also further examined in chief on 19.07.2016. PW4 & PW5 were examined in chief on 28.12.2016. PW6 & PW7 were examined in chief on 03.01.2017. PW8 & PW10 were examined in chief on 10.01.2017.

Also other witnesses, namely PW11, PW12, PW13 and PW14 were examined in chief respectively on 07.03.2017, 13.03.2017, 25.04.2017 and 09.05.2017. The petitioner's counsel has cross examined only the PW1 on 20.03.2012 and PW7 on 03.01.2012 and thereafter, other witnesses have not been cross examined. Therefore, the petitioner has filed an application in Crl.M.P No.375 of 2016 under Section 311 of Cr.P.C. to recall the witnesses viz., PW1 to PW3 for cross-examination and the same was dismissed by the Court below by an order dated 24.11.2016. Subsequently, all the witnesses were examined by the prosecution and questioning under Section 313 of Cr.P.C was also completed on 06.06.2017. Again, the petitioner has filed a petition in Crl.M.P No.299 of 2017 to recall the witnesses viz., PW2 to PW14 on the ground that his counsel has not been interested to continue this case and also, the counsel has given the change of vakalat, but the petition was dismissed on 21.06.2017. Subsequently, again he has filed a petition in Crl.M.P No.345 of 2018 to recall the witnesses of PW2 to PW5 and PW8 to PW13 and the same was also dismissed on 19.06.2018. Aggrieved by the same, the petitioner has filed a revision petition before this Court in Crl.O.P No.22077 of 2018 and the same was also dismissed by this Court on 19.09.2018. If the petitioner is not permitted to cross examine the witnesses namely, PW2 to PW6, PW8 & PW14, he will be put to irreparable loss and hardship. Hence the petitioner has filed the present petition and prays to allow this petition.

3. The learned Additional Public Prosecutor would submit that already, this petitioner has filed various petitions before the trial Court to recall and cross examine the prosecution side witnesses and the same were dismissed. In this case, trial has been started in the year 2012 wherein prosecution has examined all the witnesses. But, till now, the petitioner has not proceeded to cross examine the prosecution witnesses in order to protract the proceedings. He would further submit that all the defence witnesses have been examined and oral arguments have to be submitted before the trial Court. Hence, he prays to dismiss the present petition.

4. Heard Mr.M.P.Saravanan, learned counsel for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing on behalf of the respondent.

5. It is seen from the records, the petitioner had filed three applications for the same relief in Crl.M.P 375 of 2016, 299 of 2017 and 345 of 2018, to recall and cross examine the prosecution side witnesses and the same were dismissed on the ground of exorbitant delay. Finally, challenging the order passed in Crl.M.P No.345 of 2018, the petitioner has filed a revision petition in Crl.O.P No.22077 of 2018 before this Court

and the same was also dismissed on 17.09.2018. After getting adverse order from this Court, this petitioner has again filed an application in Crl.M.P No.146 of 2020 to recall PW1 to 5 & PW7 to 14 for cross examination and the same was dismissed by the trial Court on 22.10.2020. Aggrieved by the same, the petitioner has come forward with this application seeking direction to the trial Court to permit the petitioner to recall the witnesses for examination of prosecution witnesses. From the above, it is seen that the petitioner has failed to take effective steps to cross examine the prosecution witnesses in time. This case is pending from 2010 and hence, the Court below has rightly dismissed the applications filed by the petitioner. It is also clear that the petitioner has to complete his arguments either by oral submission or by written submission before the Court below.

6. In the considered view of this Court, this Court does not find any illegality or infirmity in the order passed by the Court below. There was absolutely no justification on the part of the petitioner not to have cross-examined the witnesses at the time when they were examined-in-chief. That apart, the petitioner did not take any immediate steps to file an application for recalling the witnesses and it has been filed with an exorbitant delay. Such attitude on the part of the petitioner, cannot be entertained and the applications filed under Section 311 of Cr.P.C. cannot be allowed as a matter of routine.

7. In the result, this Criminal Original Petition is dismissed on payment of cost of Rs.2,500/- (Rupees two thousand five hundred only) payable to the Legal Aid Services Authority, Krishnagiri, within a period of two weeks from the date of receipt of a copy of this order. However, the trial Court/Chief Judicial Magistrate, Krishnagiri, is directed to complete the proceedings in Spl.CC.No.25 of 2010 within a period of two months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
Krishnagiri

2.The Secretay,
Legal Aid Services Authority,
Krishnagiri.

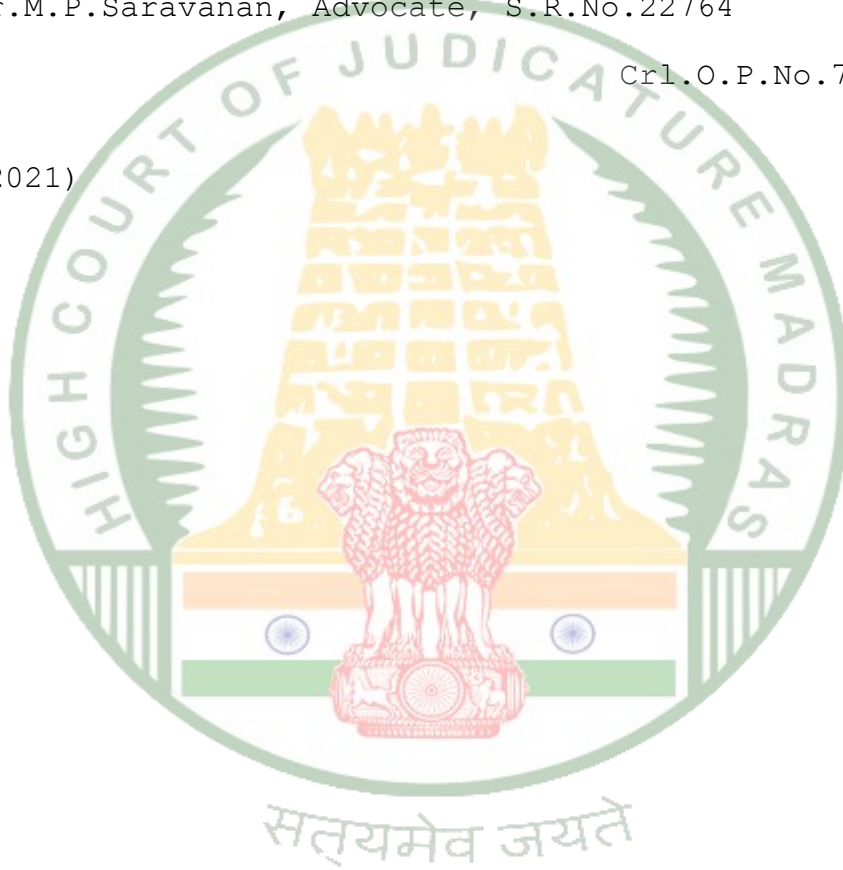
3.The Inspector of Police,
Vigilance & Anti-corruption
Krishnagiri District.

4.The Public Prosecutor
High Court of Madras
Chennai - 600 104.

+1cc to Mr.M.P.Saravanan, Advocate, S.R.No.22764

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