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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.11392 of 2021

and

Crl.M.P.No.6631 of 2021

1. Sri Kuberan EMU Farms  
No.39, K.S.R. Building  
Royapuram Main Road  
Tirupur rep.by A.G.Kumar.

2. A.G.Kumar

... Petitioners

Versus

The Inspector of Police  
Economic Offence Wing  
II Unit, Coimbatore.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in CMP.No.568 of 2021 in C.C.No.3/2017 dated 12.03.2021 on the file of the Special Court under TNPID Act, in Coimbatore consequently permit the petitioner to cross examine the prosecution witness 1 to 17.

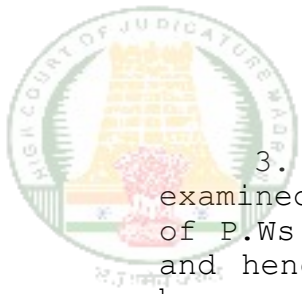
For Petitioners : Mr.C.Deivasigamani

For Respondent : Mr.A.Damodaran  
Government Advocate (Crl.Side)

ORDER

This petition has been filed to set aside the order passed in CMP.No.568 of 2021 in C.C.No.3/2017 dated 12.03.2021 on the file of the Special Court under TNPID Act, in Coimbatore, and consequently permit the petitioner to cross examine the prosecution witnesses 1 to 17.

2. The petitioner accused in C.C.No.3 of 2017 has filed the petition under Section 311 Cr.P.C. to recall P.Ws.1 to 17 in the case, in Crl.M.P.No.568 of 2021. The trial court by an order dated 12.03.2021 dismissed the petition. Hence the above Petition.



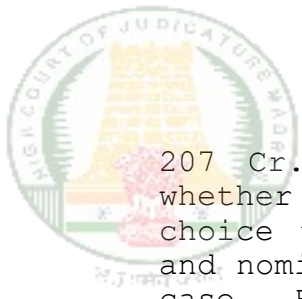
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3. The contention of the petitioner is that he has not cross examined P.Ws.1 to 17 and further during the examination of chief of P.Ws.1 to 17 at that time, petitioner not engaged any counsel and hence he was denied the fundamental right and the case has been proceeded in the absence of any legal assistance which is mandatory. For that reason, he has filed the above petition.

4. He engaged the present counsel on 24.11.2017. His counsel Mr.Deivasigamani on 24.11.2017 filed his appearance on that date and from that date onwards he is defended by his counsel, cross examined the witnesses and participating in the trial. Totally, in this case, 43 witnesses were examined and the last witness on the side of the prosecution was examined on 22.02.2021 and thereafter witness cross examined on 05.03.2021. On the same day, accused was questioned under section 313 Cr.P.C. Meanwhile on the same date, on completion of chief examination of Investigating officer, the petitioner filed the petition to recall the witnesses P.Ws.1 to 17. The court seal confirms the same. Thereafter C.M.P.No.568 of 2021 assigned and listed the petition on 12.03.2021. Meanwhile on 05.03.2021 after examining the Investigating Officer the evidence on the side of the prosecution was closed. Questioning of the accused under section 313 Cr.P.C., completed. Crl.M.P.No.568 of 2021 was kept pending and on the next hearing date on 12.03.2021 it was dismissed and the case was posted for defence side evidence.

5. Further the petitioner produced the adjudication of the court as well as the deposition copy of the witnesses P.Ws.1 to 17 and petitioners answers to the 313 question. From the adjudication, it is seen that on 04.05.2017 charge sheet taken on file and C.C.No. 3 of 2017 assigned on 05.06.2017 summons sent to the accused. On 05.07.2017 the accused appeared and copies under section 207 Cr.P.C., furnished. Further case was adjourned to 28.07.2017 and on that day charges were framed and summons were issued to the witnesses. On 10.08.2017, P.Ws1-5, on 06.09.2017 P.Ws.6 to 10, on 04.08.2017 P.Ws.11 to 14 and on 07.11.2017 P.Ws.15 to 17 were examined and Exs.P1 to P52 marked. These exhibits consists of complaints, receipts issued by A1, cheques and other documents. The petitioner denies these documents and hence these exhibits are to be necessarily confronted with the witnesses.

6. He further submitted that from 24.11.2017 after engaging this counsel of choice cross examination of witnesses done without any delay. The lower court failed to consider these aspects and had given a finding as though Advocate Mr.Kannadasan was engaged by the petitioner prior to engaging, Advocate Mr.Deivasigamani on 24.11.2017. The said Kannadasan is not a counsel who was engaged after receipt of copies under section 207 Cr.P.C. He might have appeared at the initial stage not after



207 Cr.P.C., the mandate of the trial court is to find out whether accused has got the means to engage his counsel of his choice to defend him. Otherwise he has to follow 304 Cr.P.C., and nominate a legal aid counsel. This has not been done in this case. Hence the petitioner had been denied his fundamental right of being represented by an Advocate of his choice.

7. The learned Public Prosecutor submitted that the petitioner in this case is A2, the financial establishment is A1 Kuberan Emu Farms. In this case totally 41 depositors and a sum of Rs.62,51,000/- had been misappropriated and cheated by the petitioner. The petitioner received the amount from the depositors and misappropriated the same for his own benefits, case registered and on completion of investigation, charge sheet filed against the petitioner for the offences under sections , 406, 420 of IPC and Section 5 of TNPID Act. P.Ws.1 to 17 are the depositors who hail from various places ie. Tirupur, Dindugal, Sivagangai districts and recalling them at this stage after 4 years would amount to harassing them. P.Ws.1 to 17 not only lost their money but also peace and now by recalling them, they will be subjected to harassment.

8. Further he submitted that in the lower court order, the trial judge had observed that on scanning the record , the petitioner accused had engaged one Mr.Kannadasan Advocate but in the adjudication there is no mention about the presence of his advocate after 207 Cr.P.C.

9. On the specific plea of the petitioner that the petitioner was denied Assistance of an Advocate of his choice, this Court had sought a report from the trial Judge. The trial Court in D.No.523 of 2021 dated 19.07.2021 has submitted a report. The report is extracted hereunder as follows:

"1. Mr.M.Kannadasan and M.Deenadayalan, Advocates filed memo of appearance on 24.10.2016 along with bail application in Cr.M.P.No.2937 of 2016, which was dismissed on 07.11.2016.

2. Mr.M.Kannadasan and M.Deenadayalan, Advocates filed second bail application in Cr.M.P.No.3334 of 2016, which was allowed on 09.12.2016.

3. The said counsels Mr.M.Kannadasan and M.Deenadayalan, Advocates filed copy application in C.A.No.370 of 2016 on 12.12.2016.

4. Mr.M.Kannadasan and M.Deenadayalan, Advocates filed an application to relax the conditions imposed in the bail order in Cr.M.P.No.521 of 2017 on 16.02.2017, which was allowed on 24.02.2017.



5. In the mean time, the final report was taken on file on 04.05.2017 and posted to 05.06.2017 for the appearance of the accused.

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6. Mr.M.Kannadasan and M.Deenadayalan, Advocates also filed an application to relax the conditions imposed in the bail order in Cr.M.P.No.1639 of 2017 on 16.05.2017, which was allowed on 29.05.2017.

7. On 05.06.2017, the accused A.G.Kumar was present.

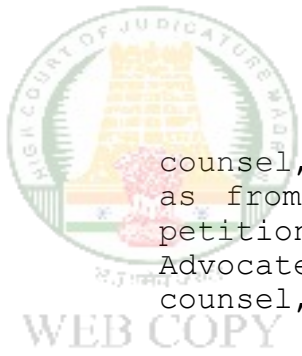
8. 05.07.2017, the accused received free copies under Sec.207 of Cr.P.C.

9. 28.07.2017, the charges were framed.

10. 10.08.2017, PW1 to PW5 were examined.

11. 06.09.2017, the accused was absent. Sec.317 of Cr.P.C. application filed by Mr.M.Kannadasan, Advocate was allowed in Cr.M.P.No.2740 of 2017. PW6 to PW10 were examined in the presence of the said counsel."

10. From the report it is seen that the petitioner had engaged an Advocate during initial stage of his arrest and thereon, in bail application, he had represented and provided legal assistance to the petitioner/accused. The name of the present counsel who filed his memo of appearance on 24.11.2017 is also found in the report. It is seen that the previous Advocate as well as the petitioner were present during the in the hearing dates throughout when PW1 to PW17 were examined and at that time the petitioner or his erstwhile counsel were present. From the evidence it is seen that it has been reported no cross examination. Further PW1 to PW17 are the depositors. All the witnesses have clearly stated that they knew the petitioner and they had approached to him in his office and on his representation they made the deposits. During 313 Cr.P.C. questioning, the answer given for the evidence of these witnesses is that the petitioner has not received any money and that the evidence are false evidences, he has denied having met them and received the deposits. This has been the answer to all the witnesses PW1 to PW17. In this case PW1 to PW39 are the depositors and the petitioner firm had a branch at Dindugal, through his agent one Sekar, he had collected deposits. The cross examination conducted with all other depositors PW18 to PW39. PW40 is the building owner, where the petitioner conducted business. PW41, PW42 and PW43 are the Investigating Officers in this case. In the petition filed before the Lower Court for recalling the witnesses, except stating that he had not engaged



counsel, no other reason is given. From the adjudication as well as from the report from the Lower Court, it is seen that the petitioner had engaged one Mr.M.Kannadasan and Mr.M.Deenadhayalan Advocates from 04.10.2016 till Mr.C.Deivasigamani, the present counsel, entered appearance on 24.11.2017.

11. In view of the same, the contention of the petitioner cannot be accepted and the trial Court had rightly rejected the plea of the petitioner and dismissed the 311 Cr.P.C., petition.

12. This Court by the order dated 16.07.2021 had directed the Lower Court not to deliver the judgment till the disposal of the above Criminal Original Petition. In view of the dismissal of the Original Petition, the trial Court shall proceed with the trial and deliver judgment

13. In view of the above, this Court is not inclined to entertain this petition. Hence, this petition stands dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-  
Assitant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

dna

To

1. The Special Court under TNPID Act,  
Coimbatore.
2. The Inspector of Police  
Economic Offence Wing  
II Unit, Coimbatore.
3. The Public Prosecutor,  
High Court, Madras.

CRL.O.P.No.11392 of 2021  
and  
Crl.M.P.No.6631 of 2021

GP (CO)  
SU (24/08/2021)