

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.7127 of 2021 and
Crl.M.P.No.4743 of 2021

A.Muthukumar

... Petitioner/

2nd Accused

Versus

The State Rep.,
by the Inspector of Police,
E.O.W-II, Coimbatore.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 17.03.2021 passed in Cr.M.P.No.725 of 2021 in C.C.No.5 of 2017 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore.

For Petitioner : Mr.E.P.Senniyangiri

For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

The petitioner/accused in C.C.No.5 of 2017 has filed a petition under Section 311 Cr.P.C., in Cr.M.P.No.725 of 2021 before the learned Special Judge, Special Court under TNPID Act, Coimbatore seeking to recall the prosecution witnesses PW1 to PW72 for cross examination. The learned Special Judge, Special Court under TNPID Act, Coimbatore, by order, dated 17.03.2021, dismissed the petition, against which the present Criminal Original Petition.

2.The contention of the petitioner is that the counsel, who was earlier appeared for the petitioner before the trial Court, has failed to cross examine the prosecution witnesses. Now, the petitioner engaged the present counsel on 12.03.2020 and he has been diligently following up the case and the Investigating Officer/PW81 was cross examined in detail.

3.The learned counsel for petitioner submitted that the Investigating Officer/PW81 in his evidence admitted that the laptop and mobile phone were seized from the petitioner at the time of his arrest, but the same were not produced before the trial Court, only on the date of his chief examination, he produced the same before the trial Court. It is a specific

case of the petitioner that in the laptop, all the witnesses making payments to the land owners, receiving the documents, inspecting the house sites and encashing the amounts are all available. From the recordings in the laptop, it can be seen that the petitioner did not receive any money. As far as the petitioner is concerned, he undertook to arrange bank loan and gave a bond for affirmation. No payments have been received by the petitioner and it is the land owners who were received the amount for construction. This fact has been admitted by the Investigating Officer in his evidence. The learned counsel for the petitioner restricts his cross examination to the witnesses PW1, PW2, PW31, PW55 and PW63 and relevant questions already put to the Investigating Officer/PW81. Therefore, it is necessary for corroboration, the petitioner to cross examine the witnesses PW1, PW2, PW31, PW55 and PW63. The petitioner has filed the petition under Section 311 Cr.P.C., not for delaying or prolonging the trial, it is only to prove his innocence. Hence, the petitioner restricts to five witnesses for cross examination and prayed for setting aside the order.

4.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the petitioner earlier filed a recall petition before the trial Court and the same was dismissed and now, it is the second recall petition which is under challenge. The petitioner claims that earlier Advocate did not cross examine the prosecution witnesses is not acceptable, for the reason that this Court as well as the Hon'ble Apex Court clearly held that the change of counsel will not be a ground for recalling the witnesses again. He further submitted that in this case, the present counsel entered appearance and filed vakalath on 12.03.2020. On 12.03.2020, PW64 was examined and the other witnesses were also examined. Hence, he strongly opposed the above petition.

5.This Court considered the rival submissions and perused the materials available on records.

6.It is true that the petitioner did not cross examine the witnesses PW1 to PW71. Majority of the witnesses are depositors, who were made deposit to purchase the house sites. From the evidence of these witnesses, some of them admitted that they have purchased the property from the land owners and made payments to the them, which fact is also admitted by the Investigating Officer/PW81.

7.In view of the petitioner seeking only five witnesses PW1, PW2, PW31, PW55 and PW63 for cross examination, this Court is inclined to permit the petitioner to cross examine PW1, PW2, PW31, PW55 and PW63 alone. The respondent Police is directed to produce the above said witnesses as and when summons issued to them. The petitioner is directed to complete the cross examination of the witnesses PW1, PW2, PW31, PW55 and PW63 on the date of their presence without

seeking any unnecessary adjournments. The entire process of recall and cross examination of the above said witnesses shall be completed not later than 07.05.2021.

8.Hence, the order dated 17.03.2021 in Cr.M.P.No.725 of 2021 in C.C.No.5 of 2017 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore is quashed. This Criminal Original Petition is accordingly allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge,
Special Court for TNPID Act,
Coimbatore.
- 2.The Inspector of Police,
E.O.W-II, Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.

NMI (CO)
RMP (19/04/2021)

CRL.O.P.No.7127 of 2021

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