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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.13866 of 2021

1.P.Ashok Kumar
2.S.Saravanan

...Petitioner

Vs.

State by it's
Inspector of Police,
Economic Offence Wing-II Unit,
Coimbatore, Coimbatore District.

...Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C. to set aside the order passed in Cr.M.P.No.883 of 2021 in C.C.No.20 of 2014 dated 26.03.2021 on the file of the Special Judge, Special Court under TNPID, Coimbatore District.

For Petitioner : Mr.K.G.Senthilkumar

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

ORDER

The petitioners, who are arrayed as A5 & A6 in C.C.No.20 of 2014 and who are facing a trial for offences under Sections 120 (b), 406, 420 IPC and Section 5 of Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997, have filed this petition.

2.The contention of the petitioners is that both the petitioners A5 and A6 have filed Crl.M.P.Nos.882 & 883 of 2021 respectively before the trial Court to reopen and recall PW1 to PW28 for the purpose of cross examination. The trial Court by the common order 26.03.2021 had dismissed the petition.



3.The further contention of the petitioners is that the petitioners earlier filed reopen and recall petition in Crl.M.P.No.850 of 2017, which was allowed by the trial Court on a condition to pay costs to the witnesses and the petitioners also deposited the witnesses batta on 14.07.2017. In the meanwhile, A2 & A3 had filed the quash petition before this Court in Crl.O.P.13062 of 2017 and also obtained the stay of further proceedings by an order of this Court dated 07.07.2017 and thereafter, on 05.12.2019, the trial Court had closed the case on the side of the prosecution and post the case for arguments on 16.12.2019, which necessitated the petitioners to file another Crl.M.P.Nos.882 & 883 of 2021 submitting that earlier they were permitted to recall. Now, the trial Court had proceeded with the trial,not permitting the petitioners to recall the witnesses for the purpose of cross examination.

4.In this case, none of the witnesses from PW1 to PW27 have been cross examined.A1 is the Company. A2 to A6 are Directors. The petitioners were no way involved day to day affairs of the business of the A1 company, it was the others, who are taking care of the business. The petitioners filed the petition under Section 315 Cr.P.C. got into the box examined themselves as DW1 to DW12. They had in detail given their evidence and posted for marking of documents tomorrow i.e. On 13.08.2021.

5.The specific contention of the petitioners is that the petitioners not signed any of the deposit receipts and any of the documents. Further, even in the partnership deed, the signature of the petitioners are disputed. Earlier the petitioners sent legal notice in this regard,. This legal notice has to be marked further and these aspects have to be put to the investigating officer to probabalise the case of the petitioners. The petitioners are not beneficiaries and the petitioners are falsely implicated in this case. Hence, it is necessary to recall the witnesses and to cross examine.

6.The learned Government Advocate (Crl.Side) submits that in this case, totally PW1 to PW27 have been examined. PW1 to PW22 are the depositors, who lost their hard earned money to the tune of Rs.53,62,800/-. All the petitioners, in this case, have conspired together cheated and misappropriated the public deposit money. They had accumulated wealth and only some properties could be attached in this case. None of the depositors paid. Further, A2 & A3, who have filed Crl.O.P.13062 of 2013 had obtained a stay order before this Court on the undertaking that they would settle the depositors and after obtaining the stay order, not even single rupee paid to any of



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the depositors. This has been the modus of the petitioners to stall the proceedings before the lower Court. The petitioners though were permitted to recall and cross examine PW1 to PW22 in CrI.M.P.No.850 of 2013, they joined hands with A2 to A3 and had not recalled the witnesses and were enjoying the stay. The trial Court on 05.12.2019 finding that stay order has not been subsequently extended. Following the judgement of the Apex Court "Asian Resurfacing of Road Agency Pvt. Ltd., and Another Vs. Central Bureau of Investigation" reported in "2018 SCC 310" wherein, the Apex Court had clearly held that no stay is perpetual and any stay is only for a period of six months, unless and until it is being extended by a speaking order. In this case, since no extension of stay order was granted, the trial Court had closed the evidence on the side of the prosecution, examined the accused under Section 313 Cr.P.C and posted the case for arguments. Now, at this stage, the petitioners are seeking recall of PW1 & PW27 for further examination. This petition has been filed only to drag the proceedings further.

7.The learned Government Advocate (CrI.Side) further submits that PW26 Inspector Police registered the FIR and PW27, who conducted investigation and filed the charge sheet. In this case, none of the witnesses has been cross examined. Further, PW26 and 27 were also not cross examined.

8. Considering the submissions and perusal of the materials, it is seen that the petitioners' primary defence is that they are not partners to A1 Company, their signatures are forged. Further, in the deposit receipts marked through PW1 to PW22, only the seal of the company is seen and not the petitioners signature. In view of the same, recalling the depositors is not going to be at any use to the petitioners. The petitioners, by examining themselves as defence witnesses under Section 315 Cr.P.C., had given their explanation and put forth their defence. Contradictions and some facts ought to be put to the investigating officer viz., PW26 & PW27. Both of them are still in service. In view of the same, this Court permits the petitioners to recall PW26 & PW27 for the purpose of cross examination. Both the witnesses to be cross examined on the day of their presence without seeking further adjournment. In any event, the process recall and cross examination of PW26 & 27 to be completed within a period of two weeks from the date or receipt of a copy of this order. It is made clear that two weeks is only an outer limit.



9. With the abovesaid direction, the Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

sms

To

1. The Special Judge,
Special Court under TNPID,
Coimbatore District.
2. State by it's
Inspector of Police,
Economic Offence Wing-II Unit,
Coimbatore, Coimbatore District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.G.Senthilkumar, Advocate, SR.No.39912

Crl.O.P.No.13866 of 2021

SR II (CO)
KKV/13/08/2021