



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.13871 of 2021

Ejike Wisdom

... Petitioner

Versus

State rep by its:

The Inspector of Police,

North Police Station,

Tirupur.

(Cr.No.924/2018).

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the Crl.M.P.No.5641/2019 in C.C.No.586/2018, and set aside the order vide in Crl.M.P.No.5641/2019 in C.C.No.586 / 2018 order dated 08.03.2021 on the file of learned Judicial Magistrate-I, Thirupur.

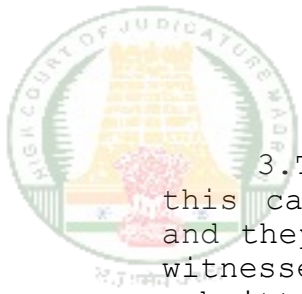
For Petitioner : Mr.B.Raja

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

ORDER

This Criminal Original Petition has been filed to set aside the order, dated 08.03.2021, made in Crl.M.P.No.5641 of 2019 in C.C.No.586 of 2018 passed by the learned Judicial Magistrate No.I, Tirupur.

2.The respondent Police registered an FIR in Crime No.924 of 2018, for offence under Section 14 of the Foreigners Act, 1946 against the petitioner. On completion of investigation, the respondent Police filed charge sheet before the learned Judicial Magistrate No.I, Tirupur and the same was taken on file as C.C.No.586 of 2018. During pendency of the trial, the petitioner has filed a petition under Section 311 Cr.P.C., in Crl.M.P.No.5641 of 2019 in C.C.No.586 of 2018 seeking to cross examine the witnesses PW1 to PW5. The learned Judicial Magistrate No.I, Tirupur, by order, dated 08.03.2021, dismissed the petition, against which the present petition.



3.The learned counsel for the petitioner submitted that in this case, totally 5 witnesses were cited during investigation and they were examined as PW1 to PW5 during trial. All the five witnesses are Police personnels. The learned counsel further submitted that the petitioner is a Nigerian by national and he had come to Tirupur for the purpose of business. The respondent Police without conducting investigation in proper, obtained sanction from the concerned authorities and registered a case against the petitioner. The learned counsel for the petitioner further submitted that the petitioner had come to India in the year 2011, got married an Indian lady in the year 2013. The marriage of the petitioner was registered on 21.01.2013 in Registration Department, Government of Tamil Nadu. Out of their wedlock, they have two children Success Chinoyerem Emordi and Gift Chisom Emordi. The birth certificates of the children are also obtained.

4.The learned counsel further submitted that the petitioner had rightly made an application for citizenship under the Citizenship Act, 1955 and the same is in process. Despite informing the same, the respondent Police mechanically registered the case against the petitioner. Since the application of the petitioner for citizenship was not considered, the petitioner has filed a Writ Petition before this Court in W.P.No.16061 of 2021 seeking direction to the concerned authorities to consider the representation of the petitioner and same is pending. The learned counsel further submitted that in this case, he did not engage Advocate of his choice. After furnishing the copies under Section 207 Cr.P.C., the learned Judicial Magistrate No.I, Tirupur failed to ascertain whether any legal aid is provided to the petitioner. The learned Judicial Magistrate No.I, Tirupur while deciding the petition in CrI.M.P.No.5641 of 2019 in C.C.No.586 of 2018, ought to have given opportunity to the petitioner under Section 304 Cr.P.C., by giving legal assistance, but mechanically dismissed the petition. Hence, he prayed for setting aside the order of the trial Court.

5.The learned Government Advocate (CrI. Side) appearing on behalf of the respondent Police submitted that during trial, the copies were furnished to the petitioner under Section 207 Cr.P.C., on 11.02.2019. PW1 to PW3 were examined on 23.05.2019, PW4 was examined on 26.02.2019 and PW5 was examined on 19.07.2019 and thereafter, the petitioner was questioned under Section 313 Cr.P.C. At this stage, the petition under Section 311 Cr.P.C., has been filed. The learned Judicial Magistrate No.I, Tirupur considering the dilatory tactics adopted by the petitioner, dismissed the petition, by order, dated 08.03.2021. The trial Court clearly mentioned in the order that the petitioner engaged various Advocates to defend at each stage of



the trial. Hence, the petitioner's claim that he was not defended by any Advocate on his choice cannot be considered.

6. This Court considered the rival submissions and perused the materials available on record.

7. It is seen that in this case, all the five witnesses (PW1 to PW5) are all Police personnels and no private witness examined during investigation. The admitted case of the petitioner is that the petitioner is a Nigerian by national and he had come to India for the purpose of business in the year 2011, got married an Indian lady in the year 2013. The marriage of the petitioner was registered on 21.01.2013 in Registration Department, Government of Tamil Nadu. Out of their wedlock, they have two children Success Chinoyerem Emordi and Gift Chisom Emordi. The birth certificates of the children were also obtained.

8. It is also seen that the petitioner had sent a representation to the Ministry of Home Affairs seeking citizenship under Section 5(1)(c) of the Citizenship Act, 1955. Since no action taken, the petitioner filed a Writ Petition in W.P.No.16016 of 2021, dated 03.08.2021 before this Court and the same is pending. Thus, the petitioner had taken all diligent steps to seek citizenship and he informed the authorities about his stay in India. While being so, the petitioner cannot be termed as overstayer in India and violated Section 14 of the Foreigners Act. Further, the petitioner has to put these facts to these the witnesses (PW1 to PW5) which are imminent for the purpose of his defence.

9. Considering the facts and circumstances of this case, this Court is inclined to give one more opportunity to the petitioner to defend his case by proper and effective cross examination. Accordingly, the order passed by the learned Judicial Magistrate No.I, Tirupur, is hereby set aside and the petitioner is permitted to cross examine PW1 to PW5. The learned Judicial Magistrate No.I, Tirupur is directed to fix a date for cross examination and issue summons to PW1 to PW5.

10. With the above direction, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.I,
Tirupur.
2. The Inspector of Police,
North Police Station,
Tirupur.
3. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.13871 of 2021

GP(CO)
CT(14/09/2021)