

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2021

CORAM

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.16993 of 2020

and Crl.M.P.No.6546 of 2020

K.P.Subramaniam,
S/o.Ponnusamy.

... Petitioner.

Vs.

State Rep. By
The Inspector of Police,
Tirupur North Police Station,
Tirupur City.
(Crime No.1293/2015)

... Respondent.

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 19.02.2020 made in CMP.161 of 2020 in S.T.C.No.176 of 2016 on the file of the learned Judicial Magistrate No.I, Tirupur.

For Petitioner : Mr.P.M.Duraiswamy

For Respondents: Mr.C.Raghavan
Government Advocate (Crl.side)

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 Cr.P.C. to re-call P.W.5 to P.W.7 for cross examination.

2.The petitioner is facing trial before the Court below for an offence under Section 279 and 338 I.P.C. The prosecution examined P.W.5 to P.W.7 on 17.03.2017. These witnesses were not cross examined and their evidence was closed. The petitioner filed an application under Section 311 Cr.P.C. on 13.01.2020 to re-call these witnesses for cross examination.

3.The Court below has dismissed the application filed by the petitioner on the ground that there is a long delay and the petitioners did not avail the opportunity to cross examine the witnesses on the day when they were present. The Court below

also relied upon the judgment of the Hon'ble Supreme Court in Vinod Kumar Vs State of Punjab [2015 (1) MLJ (Crl) 288 SC] to support its views.

4.The learned counsel for the petitioner submitted that the witnesses were not cross examined since the Advocate was not able to be present due to his ill health. The learned counsel further submitted that the petitioner changed his counsel and the new counsel entered appearance only during December 2019 and thereafter the application was filed to recall P.W.5 to P.W.7 for cross examination. The learned counsel submitted that one last chance may be given to the petitioner to cross examine the witnesses and the petitioner is willing to comply with any conditions that may be imposed by this Court.

5.Per contra, Mr.C.Raghavan, learned Government Advocate (Crl.side) appearing on behalf of the respondent submitted that the case pertains to the year 2016 and P.W.5 to P.W.7 were examined in chief on 17.03.2017. The learned counsel further submitted that even if the petitioner was not able to cross examine the witnesses on the date when they were examined in chief, steps should have been taken to immediately file a petition to re-call witnesses and there is absolutely no reason as to why the petitioner took steps after nearly three years to re-call these witnesses. The learned counsel further submitted that there are absolutely no grounds to interfere with the orders passed by the Court below and a direction should be issued by this Court for an early disposal of the case by the Court below.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.On a careful perusal of the materials placed before this Court, it is found that P.W.5 is the sister of the victim and is an eye witness to the case. P.W.6 is an Observation Mahazar witness and P.W.7 is a motor vehicle Inspector. These witnesses were examined in chief on 17.03.2017. Even if it is taken that the counsel was not able to be present on the date when these witnesses were examined in chief, due to his ill-health, steps should have been taken to immediately file a petition to re-call the witnesses. In this case, there has been an inordinate delay of nearly three years in filing the application to recall these witnesses. The application filed before the Court below does not explain as to why it took such a long time for the petitioner to file an application to re-call the witnesses.

8.In the considered view of this Court, this Court does not find any illegality or infirmity in the order passed by the Court below. However, taking into consideration the charges faced by the petitioner, this Court deems it fit to give an

opportunity to the petitioner to re-call and cross examine P.W.5, who is an eye witness in this case. This opportunity will sufficiently safeguard the rights of the petitioner for a fair trial. This Court is not inclined to re-call the other two witnesses viz., P.W.6 and P.W.7.

9. In view of the above, the Court below is directed to fix a date for cross examination of P.W.5. The petitioner shall pay a cost of Rs.3,000/- to P.W.5 on the date of her appearance before the Court. On such payment, the Court below shall permit the petitioner to cross examine P.W.5 and the cross examination shall be completed on the same date. It is also made clear that any other witnesses examined on the side of the prosecution shall be cross examined on the same date, they are examined in chief.

10. The order passed by the Court below is modified to the extent indicated herein above and there shall be a direction to the Court below to complete the proceedings in S.T.C.No.176 of 2016 within a period of two months from the date of receipt of copy of this order.

11. This Criminal Original Petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To
1 The Judicial Magistrate, No.1,
Tiruppur.

2. The Inspector of Police,
Tirupur North Police Station,
Tirupur City.
(Crime No.1293/2015)

3. The Public Prosecutor,
High Court, Madras.

+cc to Mr.P.M.Duraiswamy Advocate SR.NO.1299

Cr1.O.P.No.16993 of 2020

gm
SDR 12/02/2021