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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.17211 OF 2021

&

CRL.M.P.NO.9447 OF 2021

M.Mahesh.

... Petitioner

Versus

State by:
Inspector of Police,
EOWII, Coimbatore
(Crime No.10/2012).

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records in Cr.M.P.No.1656 of 2021 (CNR No.TNCB06-001677-2021) in C.C.No.3 of 2021 on the file of the Special Judge, Special Court under TNPID Act at Coimbatore dated 25.08.2021 filed by the petitioner for recall the Prosecution Witness PW-1 to PW-16 and PW-18 and set aside the same as illegal.

For Petitioner : Mr.R.Rajasekaran

For Respondents : A.Damodaran,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order passed by the Special Judge, Special Court under TNPID Act, Coimbatore in Crl.M.P.No.1656 of 2021, on 25.08.2021.



2. The petitioner, who is an accused in C.C.No.03 of 2021 on the file of the Special Court under TNPID Act, Coimbatore, had filed a re-call petition in Cr.M.P No.1656 of 2021 and the Trial Court, by an order dated 25.08.2021, dismissed the same. Against which, the present petition has been filed.

3. According to the petitioner, from the documents available before the Trial court, it is seen that the A1 is the partnership firm, A2 is its proprietor and the petitioner, being the brother of A2 in this case, has been falsely implicated in this case. As per the prosecution case, all the accused conspired together, issued pamphlets and collected huge sum from 16 depositors and cheated them. Hence, a complaint.

4. The learned counsel for the petitioner would submit that even before the complaint, this petitioner/A3 had met with an accident and now he is suffering with 45% disability. The petitioner's brother gave assurance to the petitioner that he will conduct the case on his behalf and he also told him that the petitioner's presence is not necessary in the Trial. Believing the same, the petitioner left the case to his brother to deal with it. Hence, the petitioner had not taken serious steps with regard to the progress of the case. Later, on 15.04.2021, the petitioner was arrested on Non-Bailable Warrant. Then only he came to know about the fact that the case against this petitioner has been split up from C.C.No.17 of 2013 and numbered as C.C.No.3 of 2021 showing the petitioner as an absconding accused and on 01.04.2021, C.C.No.17 of 2013 was ended in conviction. Since the petitioner has not cross examined the witnesses and put forth his defence on his point, he has filed a petition to recall the witnesses. But, the said petition was dismissed by the Trial Court on ground of delay. The petitioner is already confined in prison and he is also ready to abide any condition.

5. On the contrary, the learned Additional Public Prosecutor opposed this petition stating that the Trial Court order is self explanatory, wherein, it is clearly stated that the case in Crime No.10 of 2012 was registered by the Economic Offences wing-II, Coimbatore and charge sheet came to be filed on 24.04.2013. Originally, in the mother case in C.C.No.17 of 2013, the petitioner along with his brother and other accused



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were facing Trial for the offences under Section 120(b), 406, 420 IPC and Sec 5 of TNPID Act. There are totally 16 depositors, who were cheated to the tune of Rs. 40,56,000/-. He further submitted that on 19.07.2018, Non Bailabale Warrant was issued against the petitioner. After two years, following the procedures, on 06.03.2020, the case was split up as against the petitioner and numbered as C.C.No.3 of 2021, in which, NBW was again issued on 15.04.2021 and he was arrested and remanded to judicial custody on the same day. The mother case in C.C.No.17 of 2013 ended in conviction on 01.04.2021. The petitioner met with an accident only in the year 2020 and sustained 45 % disability and the petitioner is suffering with stiff neck. In this case, already P.W.1 to P.W.18 were examined, and they have been cross examined then and there. Later, recall petition was filed and the witnesses were recalled and all the witnesses were cross examined. P.W.18 was cross examined on 26.10.2016 and at that time, the petitioner herein was A3 in the mother case. Now, this petition has been filed only for the purpose of delaying the case further. The cross examination with regard to the petitioner, already done even before the case was split up against the petitioner.

6. Considering the submission and the perusal of the materials, this Court finds that the contention of the petitioner cannot be entertained. The order passed by the Trial Court is in detail. In view of the same, this Court is not inclined to interfere with the order of the Trial Court and this petition is liable to be dismissed.

7. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

mrp



1. The Special Judge,
Special Court TNPID,
Coimbatore.
2. The Inspector of Police,
EOWII, Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.17211 of 2021
&
CRL.M.P.No.9447 of 2021

RLD(CO)
RLP(22/10/2021)