



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.18144 of 2021

&

CRL.M.P.No.9965 of 2021

Gnanasekar

...Petitioner/Accused

Vs.

The State rep.by
The Sub-Inspector of Police
E-8, Kelambakkam Police Station,
Kancheepuram District.
(Crime No.578 of 2015)

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to,

(a) Stay all further proceedings in C.C.No.245 of 2017 pending trial on the file of Learned Judicial Magistrate No.I, Chengalpet, until disposal of the above Criminal Original Petition.

(b) Set-side the order dated 14-09-2021 made in Crl.M.P.No.4871 of 2021 in C.C.No.245 of 2017 by the Learned Judicial Magistrate No.I, Chengalpet.

For Petitioner : Mr.K.Selvakuramaswamy

For Respondent : Mr.A.Damodharan,
Addl. Public Prosecutor

For De-facto
Complainant : Mr.R.Sreedhar

ORDER

The petitioner, who is A1 in C.C.No.245 of 2017 for the offences under Sections 419, 465, 468, 447 and 427 r/w 34 IPC, has filed this petition challenging the order passed by the Judicial Magistrate - I, Chengalpet in Crl.M.P.No.4871 of 2021 dated 14.09.2021 allowing the 311 Cr.P.C petition filed by the prosecution and examining one Nagaraj, who was previously shown as A2 in the case.



2. The contention of the petitioner is that the said Nagaraj was shown as A2 in this case and facing trial. At that stage, he had filed a quash petition before this Court and this Court, in CrI.O.P.No.22054 of 2019, recording that compromise has been arrived between A2 and the de-facto complainant/ Immanuvel, had quashed the proceedings and further recorded that the case is not quashed on merits. In view of the same, the petitioner is not absolved of the criminal charges and hence, a person, who was cited as an accused now proposed to be examined as prosecution witness. Earlier a petition has been filed in C.M.P. No.692 of 2021 under Section 244(2) Cr.P.C. to examine the said Nagaraj as a witness. The Judicial Magistrate No.1, Chengalpet, by an order dated 19.03.2021 dismissed the same stating that the said Nagaraj has not been treated as approver and further even under Section 315 Cr.P.C, he cannot be examined due to change in status. That being the case, now cannot file a petition under Section 311 Cr.P.C and bring the said A2/Nagaraj as prosecution witness is not proper.

3. The learned Additional Public Prosecutor submitted that in this case, earlier, a petition filed by the prosecution in C.M.P.No.692 of 2021 under Section 244(2) Cr.P.C and the lower Court dismissed the same on 19.03.2021, finding that the petition has been filed under wrong provision. Further, this Court in CrI.O.P.No.22054 of 2019 had quashed the proceedings against the said Nagarajan/A2. Whatever may be the reason, once a case against a person is quashed and he is discharged from all the offences and he has got no impediment or prohibition to examine him as a witness. He further submitted that now he was examined as witness and his evidence has been recorded in chief on 24.09.2021 and hence, this petition has become infructuous.

4. The learned counsel appearing on behalf of the defacto complainant produced the order copy of the CR.P.(PD) No.1350 of 2019, wherein, the said Nagarajan/A2 seeks to strike out the plaint in O.S.No.34 of 2015 on the file of the District Munsif Court, Chengalpet. This Court, by an order dated 25.04.2019, considering all the facts, had directed the defacto complainant to take steps to withdraw the criminal proceedings against the said Nagaraj. Thereafter, the quash petition has been filed before this Court in CrI.O.P.No.22054 of 2019 and the case against the said Nagarajan (A2) had been quashed. Thereafter, there is no impediment or obstacle for examining the said Nagarajan as prosecution witness and 311 Cr.P.C petition has been filed and the trial Court considering all these aspects allowed the same. Following the same A2 has been examined as PW9 on 24.09.2021. Hence, prayed for dismissal of the above petition.



5. Considering the submissions and on perusal of the materials, it is seen that as narrated above, the said Nagaraj who was originally A2 in this case, had filed a petition to strike him out from the plaint in O.S.No.34 of 2015. This petition was challenged by way of C.R.P.(PD).No.1350 of 2019 and this court by Order dated 25.04.2019 had strike down the name of the said Nagaraj from the said Civil Suit and further directed the de-facto complainant to take steps to withdraw the case as against the said Nagaraj. Following the same, Crl.O.P.No.22054 of 2019 has been filed by the said Nagaraj/A2 and the proceedings against him has been quashed. Thereafter, 311 Cr.P.C petition has been filed and the same has been allowed and he is examined as P.W.9. This Court finds that there is no impediment in examining the said Nagaraj as P.W.9 since it has been done on the direction of this Court in C.R.P(PD).No.1350 of 2019 and Crl.O.P.No.22054 of 2019. It is found that citing the pendency of this petition, the learned counsel for the petitioner, who is appearing on behalf of the petitioner before the lower Court had not cross examined the P.W.9. In view of the same, the trial Court is directed to give an opportunity to the petitioner to cross examine PW9 on the future hearing dates.

6. With the above observations and directions, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mrp/mpl

To

1. The Sub-Inspector of Police
E-8, Kelambakkam Police Station,
Kancheepuram District.
2. The Public Prosecutor,
High Court, Madras.
3. The Judicial Magistrate No.1,
Chengalpet.

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&

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CA (CO)

K.RK. (17.11.2021)