



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.852 of 2021

T.Ramakrishnan

...Petitioner

Vs.

The state by Inspector of Police,
CCIW, Ooty, The Nilgiris.

...Respondent

PRAYER : Criminal revision is filed under Section 397 & 401 of Criminal Procedure Code to set aside the order dated 22.10.2021 made by the Judicial Magistrate, Fast Track Court at Magisterial Level, Coonoor in CMP.No.3358/2021, thereby issue no objection certificate enabling the petitioner to obtain a passport.

For petitioner : Mr.P.S.Kothandaraman

For respondent : Mr.S.Sugendran, GA (Crl.side).

O R D E R

The petitioner is the second accused facing trial in CC.No.159, 160 and 161 of 2015 had filed a petition in CMP.No.3358 of 2021 under GSR 570(E) dated 25.08.1993 r/w.section 6(2) of the Passport Act seeking no objection certificate for him to secure a passport from the passport authority to facilitate his travel to Dubai to attend to his daughter whose delivery is scheduled to 11.01.2022.

2. The respondent had filed counter before the trial Court stating that the petitioner along with six other accused had misappropriated the amount belonging to the Teachers Cooperative Thrift Society to the tune of Rs.67,50,000/- and that the petitioner is arrayed as second accused in all the cases and if the petitioner is issued with passport and permitted him to go to abroad then there is every likelihood of the petitioner evading the process of law and absconding and thereby derailing the trial. Further, it was contended that 5 witnesses out of 8 in CC.No.159/2015, 6 witnesses out of 10 in CC.No.160/2015 and 18 witnesses out of 21 in CC.No.161 of 2015 have been examined and they have not been cross examined by the petitioner. The trial Court finding that the petitioner had not made out any ground for issuance of NOC, had dismissed the petition, against



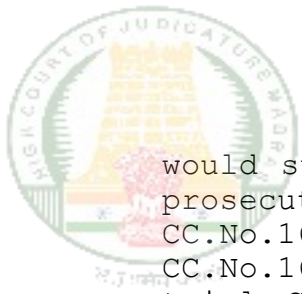
which, the present revision has been filed.

3. The learned counsel for the petitioner would further submit that the case against the petitioner was registered during the year 2015, when the petitioner was working as Sub Registrar in the Cooperative Department. Now the petitioner is aged about 62 years and retired from service. The respondent after completion of investigation had filed three cases against the petitioner in CC.Nos.159, 160 and 161 of 2015, though the trial commenced in the year 2015, it took about six long years for examination of witnesses and in CC.No.159 of 2015 five witnesses were examined, in CC.No.160 of 2015 six witnesses were examined and in CC.No.161 of 2015 eighteen witnesses were examined till 27.08.2019 and thereafter, there is no progress in trial. Since, A1 in this case had not cross examined the witnesses, the petitioner being A2 was waiting for cross examination to be done by A1. The petitioner is also taking steps to file petition under Section 311 Cr.PC to recall the witness. The petitioner's daughter after marriage is settled at Dubai and she is now pregnant and the Doctor attending on her had informed that she is scheduled to deliver a baby by 11.01.2022. The petitioner being a father has to be with his daughter at the time of delivery and thereby the petitioner had applied for no objection certificate. Whereas, the trial Court wrongly finding that the petition has been filed only to protract the trial had dismissed the application.

4. The learned counsel would further submit that since, A1 had not cross examined the witnesses so far, the petitioner is also waiting to cross examine after the cross examination has been completed by A1. Moreover, the entire case of the prosecution is borne out by records and there is no question of disputing the identity of the petitioner or the witnesses will not arise in this case. The learned counsel would further submit that the petitioner has also filed an affidavit of undertaking before this Court and it may also be considered and taken on record.

5. The learned counsel would further submit that in any event, if the Court wants the petitioner to appear before the Court, he is prepared to cut short his trip and appear before the trial Court. The petitioner's son in law has got permanent job in Dubai and the petitioner is also prepared to give his contact number, E-mail ID and address in Dubai and the petitioner undertakes to return back India within six weeks from the date of leaving India. The learned counsel would further submit that the petitioner is also prepared to furnish sufficient sureties before the trial Court.

6. Mr.S.Sugendran, learned Government Advocate (Crl.side)



would submit that the petitioner is A2 in CC.No.159 of 2015 the prosecution has so far examined 5 witnesses out of 8, in CC.No.160 of 2019 so far examined 6 witnesses out of 10 and in CC.No.161 of 2019 so far examined 18 witnesses out of 21. The trial Court rightly finding that the petitioner had not cross examined the witnesses so far and also finding that the petition had been filed only to delay the trial had dismissed the petition. However, he would submit that the case of the prosecution is borne out by documents. He would further submit that C.C.Nos.160 and 161 of 2015 now stands posted for examination of further witnesses on 06.01.2020.

7. Heard both sides and perused the materials available on record.

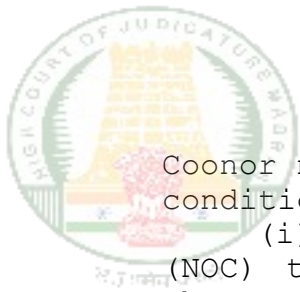
8. The Trial Court finding that the case is at the fag end and that the petitioner has not cross examined the witnesses so far, had dismissed the application. In this case, the petitioner has now filed an affidavit of undertaking dated 21.12.2021, agreeing to file petition to recall the witnesses on the next hearing date. Further, he has also agreed to abide by any conditions imposed by this Court. The undertaking given by the petitioner in the affidavit is extracted hereunder :-

"5. I state that in C.C.No.159/2015, the examination in chief of four witnesses has been recorded, in C.C.No.160/2015, the examination in chief of six witnesses has been recorded and in C.C.No.161 of 2015, the examination in chief of fifteen witnesses has been recorded by the Trial Court.

6. I state that none of the accused including me concerned in the above cases cross examined any of the witnesses whose examination in chief was recorded by Court. Since the cross examination of the first accused was not done by the counsel concerned and as I could not guess the evidence that the witnesses are likely to give in the cross-examination of the first accused, I did not cross-examine them as I was waiting for their cross-examination by the first accused.

7. I state that in view of the directions given by this Honourable Court in the above petition. I undertake to file a petition in all above three cases under Section 311 Cr.PC, immediately on the succeeding hearing date of the cases and on the appearance of the witnesses. I undertake to cross examine them irrespective of the other accused cross examining them.

8. I further undertake to cross examine any other witness who may be produced by prosecution on the same date of their examination in chief in Court



Coonor made in CMP.No.3358 of 2021 is set aside on the following conditions :-

(i) The trial Court shall issue no objection certificate (NOC) to the petitioner for obtaining a passport on condition that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) each with two sureties out of two sureties one shall be a close relative and other shall be a Government servant for a like sum to the satisfaction of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Coonoor.

(ii) In the event of issuance of passport by the authorities, the petitioner shall intimate the date of departure and shall return to India within six weeks from the date of departure.

(iii) The petitioner shall furnish the details of his place of stay with local address at Dubai, Telephone number and E-mail ID to the Court and to the respondent.

(iv) The petitioner shall appear before the Court till such time, he leaves India on all the hearing dates.

(v) In any event, if the trial Court insists for appearance of the petitioner before the Court, the petitioner shall return to India immediately.

(vi) After returning from Dubai, the petitioner shall surrender the passport before the trial Court.

12. With the above directions, the criminal revision stands allowed. The affidavit of undertaking dated 21.12.2021 filed by the petitioner shall form part of the record.

(*) Here enter the affidavit of undertaking

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Fast Track Court at Magisterial Level, Coonoor.
2. The Inspector of Police, CCIW, Ooty, The Nilgiris.
3. The Public Prosecutor, High Court, Madras.

+1cc to M/s.P.S.Kothandaraman, Advocate, S.R.No.69202

CrI.RC.No.852 of 2021

BP(CO)

RGA(27/12/2021)