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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.830 of 2021

and

Crl.MP.12033 of 2021

Kumaresan

... Petitioner

Vs.

State Rep by The Inspector of Police,
B6 Peelamedu Police Station,
Coimbatore (Cr.No.605 of 2018)

.... Respondent

PRAYER : Criminal revision is filed under Section 397 and 401 of Criminal Procedure Code to set aside the Docket order dated 08.11.2021 made in CC.No.75 of 2018 on the file of the Additional District Judge/Presiding Officer, Special Court for EC Act cases, Coimbatore.

For petitioner : Mr.A.Padmanabhan for Mr.R.Prabakar.

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

O R D E R

This revision has been filed seeking to set aside the docket order dated 08.11.2021 made in CC.No.75 of 2018 on the file of the Additional District Judge/Presiding Officer, Special Court for EC Act cases, Coimbatore.

2. The brief facts of the case is as follows :-

The petitioner, arrayed as A3 in CC.No.75 of 2018 on the file of the Additional District Judge/Presiding Officer, Special Court for EC Act cases, Coimbatore, is facing trial for the offences under Sections 8(c) r/w.20(b)(ii)(B), 25 of NDPS Act. The trial was in progress and the matter was posted on 08.11.2021 for the appearance of A1, A2 and A3 and for



examination of LW2 and LW3. Whiles, the petitioner/A3 had appeared before the trial Court on 08.11.2021, however, the counsel for the petitioner had not appeared on that day. LW3 alone had appeared on that day and he was examined as PW3. The counsel for A1 and A2 had cross examined PW3 and when the Court had enquired the petitioner/A3, he had replied that there is no cross examination on his behalf and that his advocate had asked him to inform the Court that there is no cross on his side. The Trial Court, finding that A3 was indulging in dilatory tactics and dragging on the proceedings by relying on the ratio laid down by the Hon'ble Apex Court in the case of State of U.P. Vs. Shambhu Nath Singh reported in (2001) 4 SCC 667, had remanded the petitioner to judicial custody, against which the present revision has been filed.

3. The learned counsel for the petitioner would submit that the petitioner/A3 in this case had been regularly appearing before the Court and that on 08.11.2021, the case was posted for appearance and examination of LW2 and LW3, however, on that day, LW2 had not appeared before the Court and LW3 alone had appeared and he was examined by the prosecution as PW3. He would further submit that in the Section 161 Cr.PC statement recorded from LW3, no averment was made against the petitioner and thereby finding that cross examination of PW3 was not necessary and required, the counsel for the petitioner who was unable to come to Court had instructed the petitioner to inform the Court that no cross examination was required on his side. He would further submit that even during examination in Court LW3 who was examined as PW3 had not deposed anything against the petitioner. Hence, as directed by his Counsel, the petitioner had when enquired by the trial Judge had replied that he does not intend to cross examine PW3. He would also submit that the petitioner had also not made any request to the Court for adjournment or filed any petition seeking to defer the cross examination, rather the petitioner had only reported to the Court that there is no cross examination and thereby at no stretch of imagination the petitioner can be held to have adopted dilatory tactics for dragging the trial.

4. The learned counsel would further submit that when the petitioner has not intended to cross examine the witness, the trial Court ought to have recorded no cross on the side of the petitioner and closed the evidence of the particular witnesses, and posted the case to some other date for examining the other witnesses, whereas, the Trial Court without any justifying cause in gross violation of the right of liberty granted to the petitioner and envisaged under Articles 21 and 22 of the Constitution of India, without affording any opportunity and in



violation of procedure established under law had directed the remand of the petitioner. He would also submit that the petitioner had been fully coopearting for trial and he had also not caused any delay in trial on any earlier occasion.

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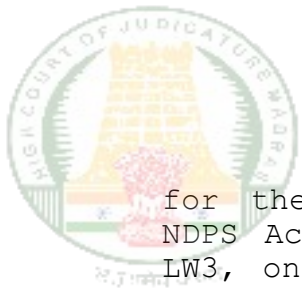
5. The learned counsel would further submit that subsequently, the petitioner had also filed application for bail and the trial Court had referred to the words spoken by the petitioner in the Court and that the petitioner had only informed the Court that his counsel had told him that there is no cross examination on his behalf.

6. The learned counsel appearing for the petitioner would submit that in the case of State of U.P. Vs. Shambhu Nath Singh referred by the trial Judge the Hon'ble Apex Court has held that if the accused or his counsel does not cooperate for day to day examination of witnesses, the Court can remand the accused to custody or in alternate, when the accused is absent and the witness is present to be examined, the Court can cancel the bail, already granted to him. Such a situation had not arisen in this case and except reporting to Court that there is no cross examination on his side, the petitioner has not done anything so as to delay the trial and reporting no cross examination does not amount to dilatory tactics, that too when the petitioner has not asked for any adjournment in this case on account of his advocate being not present on the particular day.

7. The learned counsel would reiterate that even reading of the deposition of PW3 would disclose that there is no requirement for the petitioner to cross examine PW3, other than intimating the Court that there is no cross examination, he had not done anything amounting to dilatory tactics. He would further submit that the order of remand is in violation of procedure established by law and the order of remand is illegal. He would thereby seek to set aside the order of remand and pray that the petitioner may be directed to be released on bail.

8. The learned Government Advocate (Crl.side) would submit that the case was posted for examination of LW2 and LW3 on 08.11.2021 and on that day, LW2 did not appear and LW3 was examined as PW3. He would submit that PW3 has spoken about the involvement of A1 and A2 and he has not deposed anything about the involvement of A3 in this case.

9. Heard the counsel and perused the materials available on record.



10. The petitioner is A3 in CC.No.75 of 2018 facing trial for the offences under Sections 8(c) r/w.20(b)(ii)(B), 25 of NDPS Act. The case had been posted for appearance of LW2 and LW3, on that day LW2 did not appear and LW3 was present and he was examined as PW3. In this case, the counsels for A1 and A2 have cross examined the witnesses and when the trial Judge had questioned the petitioner, he had informed that his counsel had told him that there is no cross examination on his side. The learned trial Judge, by relying on the judgment of the Hon'ble Apex Court in the case of State of U.P. Vs. Shambhu Nath Singh referred supra, had remanded the accused/petitioner to judicial custody.

11. As stated above, in this case, the petitioner/accused was present and he had informed the Court that there is no cross examination on his side. Perusal of the deposition also show that PW3 has not deposed anything about the petitioner/A3 and there was also no necessity for the petitioner/A3 to cross examine the witnesses. The words spoken by the petitioner/A3 in the Court has been extracted by the trial Judge in the the order dated 15.11.2021. It is useful to refer to the particular portion :

"நேற்று மதியம் 2.00மணிக்கு மதுரையில் இருந்து கிளம்பி இரவு, இங்கு வந்து சேர்ந்தேன். என்னுடைய வழக்குரைஞர் நாளைய சாட்சி விசாரணையின் போது எனது தரப்பில் குறுக்கு விசாரணை எதுவும் இல்லை என்று சொல்லச் சொன்னார். "

12. In State of U.P. Vs. Shambhu Nath Singh reported in (2001) 4 SCC 667 the Hon'ble Apex Court has held :-

"14. If any court finds that the day to day examination of witnesses mandated by the legislature cannot be complied with due to the non co-operation of accused or his counsel the court can adopt any of the measures indicated in the sub-section i.e. remanding the accused to custody or imposing cost on the party who wants such adjournments (the cost must be commensurate with the loss suffered by the witnesses, including the expenses to attend the court). Another option is, when the accused is absent and the witness is present to be examined, the court can cancel his bail, if he is on bail (unless an application is made on his behalf seeking permission for his counsel to proceed to examine the witnesses present even in his absence provided the accused gives an undertaking in writing that he would not dispute his identity as the particular accused in



the case.) "

13. The above decision makes it clear that only when the accused and the counsel are absent and only when dilatory tactics is adopted by the accused, the Court can impose cost on the party who wants adjournment or if the accused is on bail cancel the bail granted to him. In this case, the petitioner was present before the Court on the date of hearing and he had only stated that there is no cross examination on his side. He had not asked for any adjournment or filed any petition seeking to defer cross examination. The act of the petitioner can at no stretch of imagination be construed to adopting dilatory tactics. In such circumstances, the trial Court ought to have recorded no cross on the side of the petitioner/A3, in respect of the particular witness and closed his evidence and posted the case to some other date for examination of other witnesses. The learned trial Judge without proper understanding the ratio laid down in the State of U.P. Vs. Shambhu Nath Singh referred supra had remanded the accused, without following due process of law.

14. In the opinion of this Court, when such an order of remand is passed not in accordance with the procedure established by law, it has to be set aside.

15. In view of the above, the criminal revision stands allowed and the order dated 08.11.2021 made in CC.No.75 of 2018 passed by the Additional District Judge/Presiding Officer, Special Court for EC Act cases, Coimbatore remanding the petitioner/accused is set aside and the petitioner/accused is ordered to be released on bail on condition :-

(a) he executes a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), with one surety each for a like sum to the satisfaction of the Additional District Judge/Presiding Officer, Special Court for EC Act cases, Coimbatore, and on further conditions that;

(b) the surety shall affix his photograph and Left Thumb Impression in the surety bond and the learned Judge may obtain a copy of their Aadhar Card or Bank Pass Book to ensure his identity;

(c) the petitioner, on his release from the prison, shall report before the Trial Court everyday at 10.30 a.m. for a period of one week and thereafter on all hearing dates without fail;

(d) the petitioner shall not abscond during trial;



(e) the petitioner shall not tamper with evidence or witness during trial and he would cooperate for speedy trial.

Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The The Inspector of Police,
B6 Peelamedu Police Station,
Coimbatore.
2. The Additional District Judge/Presiding Officer,
Special Court for EC Act cases, Coimbatore
3. The Superintendent,
Central Prison,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.R.Prabakar, Advocate, S.R.No.60473

Crl.RC.No.830 of 2021

JP-II (CO)
SU(24/11/2021)