



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.11.2021
CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE V. BHARATHIDASAN

CRL.M.P.No.15019 of 2017
in
Crl.O.P.No.22156 of 2014

1. Palanichamy
2. Kandasamy
3. Dhandapani
4. Thangavel
5. Eswaramoorthy
6. Shanmugam
7. Stalin Murugesan @ Veerakumar
8. Ponnusamy
9. Sodakkadai Subramani @ Balasubramaniam
10. Karikalan
11. Govindhammal ... Petitioners

Versus

1. Semalaiyappan
2. The State rep. by
The Inspector of Police,
Vellakovil Police Station,
Tiruppur District. ... Respondents

PRAYER: This Criminal Miscellaneous Petition has been filed under Section 482 of Cr.P.C. to eschew the recording of the question and answer found in the re-examination of P.W.1, which was recorded on 11.07.2017 in Spl.S.C.No.134 of 2014 pending on the file of the learned Special Court cum Principal Sessions Court, Erode, Erode District.

Prayer in Crl.O.P.No.22156 of 2014:

Criminal Original petition filed under section 482 of CrPC pleased to call for the entire records connected with the order dt.27.3.14 passed in Cr.M.P.No.426/2014 in SC.1/2014 on the file of the Court of the Special Judge (Principal Sessions Judge) Tiruppur constituted under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 and set aside the same and consequently allow the above Cr.M.P.No.426/2014.

For Petitioners: Mr. M. Saravanan

For Respondent : Mr. S. Sathia Chandran



ORDER

This Criminal Miscellaneous Petition has been filed to expunge the re-examination of P.W.1, which was recorded on 11.07.2017 in Spl.S.C.No.134 of 2014 on the file of the Special Court cum Principal Sessions Court, Erode.

2. The learned counsel for the petitioner would submit that the petitioners are arrayed as A1 to A11 and they stood charge for the offences under Sections 147, 294(b), 323, r/w.149 of IPC and Section 3(1)(X)(XIV) SC/ST Act. Earlier, this Court has appointed Mr.B.Mohan, Senior Advocate, as the Special Public Prosecutor, and on an application filed by the Special Public Prosecutor in Crl.M.P.No.426 of 2014, before the Principal Sessions Court, Tiruppur, all the prosecution witnesses, i.e. P.Ws.1 to 11 were sought to be recalled and the same was dismissed on 27.03.2014. Challenging the same, the defacto complainant filed a petition in Crl.O.P.No.22156 of 2014 before this Court and this Court, by an order, dated 24.03.2017, permitted to recall P.Ws.1 to 9. Thereafter, P.W.1 was recalled and during examination, he has mentioned the name of the persons, who have attacked him and the same was objected by the counsel appearing for the accused stating that the question was put only to fill up the lacuna in the prosecution evidence. The Trial Court, after considering the objection, has held that the objection of the accused will be considered after completion of trial, i.e., at the time of pronouncing judgment. Hence, the present petition has been filed to eschew the above evidence on the ground that the witnesses are recalled and examined only to fill up the lacuna in the prosecution case.

3. Heard the learned counsel appearing for the second respondent and perused the materials available on records carefully.

4. From the perusal of the records, it could be seen that on the petition, filed by the defacto complainant against the Public prosecutor, in Crl.O.P.No.22043 of 2013, this Court appointed a Special Public Prosecutor on 26.09.2013. Thereafter, the application, filed by the Special Public Prosecutor for examination of witnesses, was dismissed on 27.03.2014 and challenging the same, the defacto complainant approached this Court and this Court, by an order dated 24.03.2017, permitted to recall P.Ws.1 to 9 for re-examination. Pursuant to the order of this Court, P.W.1 was recalled and his evidence was recorded, wherein, he has clearly stated the name of the persons, who have attacked him and the same was objected by the accused. However, that objection was not rejected by the Trial Court, and the Trial Court has only held that those objection will be considered after completion of trial, i.e., at the time of delivering judgment. Hence, this Court finds no error in the order



passed by the Trial Court and there is no merit in this petition.

5. In view of the above, this Criminal Miscellaneous Petition is dismissed. As the matter is of the year 2014 and already trial has commenced, the Trial Court is directed to proceed with the trial and complete the same within a period of two months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mrp
To

1. The Special Judge, cum Principal Sessions Judge,
Erode, Erode District
2. The Inspector of Police,
Vellakovil Police Station,
Tiruppur District.
3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.S. Sathia Chandran, Advocate Sr.NO. 62812

+1 cc to Mr.V.Ragavachari, Advocate Sr.NO. 62419

CRL.M.P.No.15019 of 2017
in

CrI.O.P.No.22156 of 2014

mg (CO)
A.SK(10.12.2021)