



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :03.02.2021

CORAM :

THE HONOURABLE **Mrs. JUSTICE R. HEMALATHA**

Crl.O.P. (MD)No.1368 of 2021
and
Crl.M.P (MD) .No.659 of 2021

Uma Sankar ... Petitioner/Accused No.1
Vs.

1.State rep., by
The Inspector of Police,
Virudhunagar West Police Station,
Virudhunagar District.
(Crime No.609 of 2013) ... Respondent/Complainant

2.A.S.Jeyakkar ... Respondent/Defacto Complainant

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records and set aside the order passed by the Judicial Magistrate No.1, Virudhunagar in Cr.M.P.No.1733 of 2020 in CC.No.62 of 2014 dated 22.10.2020.

For Petitioner : Mr.AK.Azagarsami
For Respondent No.1 : Mr.S.Chandrasekar
Additional Public Prosecutor

ORDER

The present petition is filed by the petitioner to set aside the order passed by the Judicial Magistrate No.I, Virudhunagar on 22.10.2020 in Cr.M.P.No.1733 of 2020 in CC.No.62 of 2014, in and by which, the Judicial Magistrate No.I, Virudhunagar allowed the petition filed under Section 311 of the Code of Criminal Procedure.

2.The case of the prosecution is that one Gnanasekar, received the stolen jewels from the accused. According to the prosecution, the said Gnanasekar is working in IIFL Bank, Srivilliputhur and that unless he is examined, the prosecution would not be in a position to bring out the guilt of the accused. The learned Judicial Magistrate, after hearing both the prosecution and the accused, passed an order in Cr.M.P.No.1733 of 2020, thereby, allowing the petition on 22.10.2020.



3. A perusal of the orders passed by the Judicial Magistrate shows that the said Gnanasekar has not been shown as a witness in the final report and that the prosecution wanted to examine him as an additional witness in order to establish the guilt of the accused.

4.The main contention of Mr.AK.Azagarsami, learned counsel appearing for the petitioner/accused is that when both side evidence is closed and the matter is reserved for judgment, the prosecution came out with such a petition and that the Judicial Magistrate No.1, Virudhunagar without applying his mind has passed an order allowing the petition filed by the prosecution. His specific contention is that after the evidence is closed on both sides, the prosecution should not try to fill up the lacunae.

5.It is pertinent to point out that the learned Judicial Magistrate has considered the arguments of the accused and held that the prosecution is not trying to fill up the lacunae by examining the said Gnanasekar, subsequent to the closure of the prosecution evidence. It is the duty of the Court to arrive at the truth and subserve the ends of justice. The power under Section 311 of the Code of Criminal Procedure is given to the Court not to be merely exercised at the bidding of any one party / person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by Courts to power under this Section only for the purpose of discovering relevant facts or obtaining proper proof of such facts, as are necessary to arrive at a just decision in the case. In the decision in S.R.Sinha vs. Mrinal Sengupta and others reported in (2007) 11 SCC 802, it is held that

"What is important is that if the interests of justice so demands and a witness is required to be re-called, even the inconvenience that may caused of re-calling witnesses for cross-examination, if that becomes necessary in order to ensure that there is no prejudice caused to the accused persons, should not by itself be a ground to refrain from re-calling the witness or examining a witness. The observation of the learned Judge that it gives the impression as if the prosecution is tilting in favour of one party at the cost of the other, does not seem to be wholly justified"

It is further held in the said decision that there is no bar against the examination of a witness even at a stage subsequent to the recording of the statement of the accused in exercise of power under Section 311 of the Code of Criminal Procedure.



6. In the instant case, the learned Judicial Magistrate has dealt with all the aspects in his orders dated 22.10.2020 and I do not find any reason to interfere with the orders, especially, when the accused has not shown as to how he is prejudiced by allowing the petition filed under Section 311 of the Code of Criminal Procedure. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmk

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate No.I, Virudhunagar.
- 2.The Inspector of Police,
Virudhunagar West Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P.(MD)No.1368 of 2021
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ES (CO)

TR(10.03.2021) 3P 4C