



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 16.06.2021

DATE ON WHICH PRONOUNCED : 23.06.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.7831 of 2021

and

Crl.MP(MD)Nos. 4006 & 4007 of 2021

1.Subramaniam

2.Jothimani

3.Parameswari

... Petitioners/Petitioners/
Accused No.5, 6 & 8

Vs.

State through
Inspector of Police,
Economic Offence Wing - II,
Virudhunagar.
Crime No.2 of 2013.

... Respondent/Respondent
Complainant

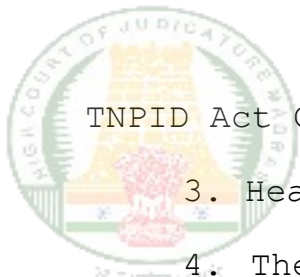
Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for records relation to the order dated 21.04.2021, passed by the learned Special Judge, Special Court under TNPID Act Cases, Madurai in Cr.MP.No.1042 of 2021 in C.C.No.4 of 2017 and set aside the same and allow the above Criminal Original Petition as prayed for.

For Petitioners : Mr.A.Jeyaram
For Respondent : Mr.R.M.Anbu Nithi,
Additional Public Prosecutor.

ORDER

This Criminal Original Petition is filed to quash the order passed by the learned Special Judge, Special Court under TNPID Act Cases, Madurai in Cr.MP.No.1042 of 2021 in C.C.No.4 of 2017.

2. The case of the prosecution is that the petitioners herein filed a petition before the learned Special Judge, Special Court under TNPID Act Cases, Madurai, under Section 311 Cr.P.C to re-call the witnesses P.W.22 to P.W.50 for cross-examination. That petition was dismissed by the learned Special Judge, Special Court under



TNPID Act Cases, Madurai, dated 21.04.2021.

3. Heard both sides.

4. The main ground on which, the petition in Cr.MP.No.1042 of 2021 in C.C.No.4 of 2017 has been filed under Section 311 Cr.P.C came to be dismissed by the Special Court under TNPID Act Cases, Madurai is that even though the learned counsel for the petitioners was present during the chief examination of the witnesses, he did not avail the opportunity to cross-examine the witnesses. Moreover, the reason for non-cross-examination of witnesses is not properly set out at the time of trial. By relying upon the number of judgments, the Trial Court has dismissed the petition.

5. Now, according to the learned counsel for the petitioner, because of the pendency of the civil suit in O.S.No.6 of 2019, they were not in a position to cross-examine the witnesses, on the date of chief examination since they were not in a position to get proper instruction. Even though the reason mentioned by the petitioners for not cross-examined the witnesses may not be proper, the facts remains that without cross examining the material witness, it may not be proper for the Trial Court to render justice on merits. The purpose of cross examination have been elaborately discussed by the Hon'ble Supreme Court in the case of **Kartar Singh Vs State of Punjab reported in (1994) 3 SCC 569**, the points, which have been decided by the Hon'ble Supreme Court is extracted hereunder:-

"Section 137 of the Evidence Act defines what cross-examination means and Sections 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:

(1) to destroy or weaken the evidentiary value of the witness of his adversary;

(2) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;

(3) to show that the witness is unworthy of belief by impeaching the credit of the said witness:

and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character."

6. So, this position is also been pressed in the case of **Jayendra Vishnu Thakur Vs.State of Maharashtra** reported in **(2009) 7 SCC 104** in the following words:-

<https://hcservices.courts.gov.in/hcservices/>



"A right to cross-examine a witness, a part from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and re-examination. Section 138 of the Evidence Act confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But, indisputably such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed thereabout. If an exception is to be carved out, the statute must say so expressly or the same must be capable of being inferred by necessary implication. There are statutes like the Extradition Act, 1962 which excludes taking of evidence vis-a-vis opinion."

7. A mere reading of the above observation, the Hon'ble Supreme Court shows that cross examination is the base of fair trial. Even though, the petitioners and their counsel failed at times, they should not be penalised at the cost of fair trial. Witnesses can be compensate by awarding cost. But, the damage caused to the accused persons due to non-cross-examination of the material witnesses, can not be compensated.

8. So, on this sole ground, I am of the considered view that this petition is liable to be allowed. The order passed by the learned Special Judge, Special Court under TNPID Act Cases, Madurai in Cr.MP.No.1042 of 2021 in C.C.No.4 of 2017, is quashed with the following conditions:-

(i) The petitioners must deposit Rs.1000/- (Rupees One Thousand Only) as cost to the each witness before the Trial Court within 15 days from the date of resumption of normal work.

(ii) The Trial Court may fix a date for cross examination of the witnesses and shall send summons to the witnesses.

(iii) On the date fixed, the petitioners must cross examine the witnesses without fail. If any failure is noticed, then the right of cross examination of the witnesses will be lost.

9. With the above direction, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



dss

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 Special Judge, Special Court under TNPID Act Cases, Madurai
- 2.Inspector of Police,
Economic Offence Wing - II,
Virudhunagar.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.JEYA RAM, Advocate (SR-20222[F] dated 25/06/2021)

Crl.O.P. (MD)No.7831 of 2021

and

Crl.MP(MD)Nos. 4006 & 4007 of 2021

23.06.2021

MA (CO)

TR(02.07.2021) 4P 5C