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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.NO.5438 OF 2022

AND

CRL.M.P.NO.2969 OF 2022

Sundramuruganantham

... Petitioner

.Vs.

The State represented by its,
The Inspector of Police,
Tiruppur North Police Station,
Tiruppur District.
Crime No.1235 of 2016.

... Respondent

PRAYER:-

This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records relating to the impugned order dated 23.11.2021 made in Cr.M.P.No.2780 of 2021 in C.C.No.66 of 2018 on the file of the learned Judicial Magistrate-I, Tiruppur to set aside the same as illegal.

For Petitioner : Mr.K.M.Kalicharan

For Respondent : Mr.V.Meghanathan
Government Advocate
(Criminal Side)

O R D E R

This Criminal Original Petition has been filed to call for the entire records relating to the impugned order dated 23.11.2021 made in Cr.M.P.No.2780 of 2021 in C.C.No.66 of 2018 on the file of the learned Judicial Magistrate-I, Tiruppur to set aside the same.

2. Learned counsel appearing for the petitioner would submit that the petitioner/accused is facing trial for the offences punishable under Section 279 and 304(A) of IPC in C.C.No.66 of 2018, on the file of the Judicial Magistrate-I, Tiruppur. The



petitioner has been appearing for trial from the year 2018, however, due to lack of proper advise, the petitioner was unable to cross examine the witnesses PW1 to PW13 and thereby, the petitioner had filed an application in Crl.M.P.No.2780 of 2021 seeking to recall PW1 to PW13 for cross examination. The learned Trial Judge, taking into consideration, the mandate of the Judgment of the Hon'ble Apex Court in Vinod Kumar Vs State of Punjab, reported in AIR 2015 SC 1206, had dismissed the application.

3. He would also submit that PW1 to PW13 are important witnesses. Though there had been serious lapses on the side of the petitioner in not cross examining the witnesses, their evidence is very much essential for arriving at a just decision of the case. If the petitioner is not permitted to cross examine the witnesses, it would amount to a case of no defense, thereby, denying the fair trial resulting in conviction and grave hardship to the petitioner. He would further submit that if one chance is given to the petitioner, he would cross examine the witnesses on the date of their appearance without delay, subject to the imposition of cost and terms as fixed by this Court.

4. Learned Government Advocate (Crl.Side) would submit that the case is pending from the year 2018. The witnesses PW1 to PW6 were examined in chief on 05.06.2018, PW7 was examined in chief on 19.06.2018, PW8 and PW9 were examined in chief on 20.12.2018, PW10 was examined in chief on 06.03.2018, PW11 was examined in chief 10.03.2020 and PW12 was examined in chief on 29.09.2021. The Trial Court rightly following the mandate of Vinod Kumar Vs State of Punjab, reported in AIR 2015 SC 1206, had dismissed the application. He would also submit that there is no infirmity in the order passed by the learned trial Judge. He would further submit that the case stands posted for examination of the defense side witnesses on 10.03.2022.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

6. The Trial Court rightly following the mandate of the Hon'ble Apex Court in Vinod Kumar Vs State of Punjab, reported in AIR 2015 SC 1206, had rightly dismissed the application. I do not find any infirmity in the order passed by the learned trial Judge. However, in this case, the petitioner is facing charges for the offence under Sections 279 and 304(A) of IPC. Perusal of records shows that PW1 to PW13 are important witnesses and their evidence is essential for arriving at a just decision of the case. If a chance is not given to the petitioner, it would amount to the case of no defence, denying the opportunity of fair trial to the petitioner.



7. This Court enquired the respondent as to whether they will be able to produce the witnesses on any date fixed by the Court. Mr. Ravikumar, Head Constable of the respondent police submitted that the witnesses are available and that PW1 and PW4 are residents of Thiruvannamalai and all others are local witnesses from Tiruppur.

8. In view of the above, this Court is of the opinion that the petitioner may be permitted to recall and cross examine the witnesses PW1 to PW13 subject to imposition of cost and terms. The petitioner shall deposit a sum of Rs.21,000/- (Rupees Twenty One Thousand only) before the Trial Court and file an Application for recalling the witnesses. On such Application being made, the learned Trial Judge shall recall the witnesses and fix a date for cross examination. The petitioner shall cross examine the witnesses on the same date of their appearance before the Court and in the event of petitioner failing to cross examine the witnesses on the date of their appearance, he will lose the further chance of cross examining the witnesses.

9. The Trial Judge shall disburse a sum of Rs.3000/- each to PW1 and PW4 and others shall be paid with a sum of Rs.1500/- each, on the date of their appearance

10. Accordingly, this Criminal original petition stands disposed of on the above terms. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rgi/ham

To

1. The Judicial Magistrate No.I,
Tiruppur.
2. -Do- Thro the Chief Judicial Magistrate,
Tiruppur.
3. The Inspector of Police,
Tiruppur North Police Station,
Tiruppur District.



4. The Public Prosecutor,
Madras High Court.

+1cc to Mr.K.M.Kalicharan, Advocate, S.R.No.16748

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PBS/11/03/2022