



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P.No.6768 of 2022
and
CrI.M.P.No.3845 of 2022

Sindhu ...Petitioner/Accused No.3

Vs.

The State Represented by,
The Inspector of Police,
E.O.W-II, Coimbatore. .

...Respondent/Complainant

PRAYER : The Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order dated 02.03.2022, passed in Cr.M.P.No.142 of 2021 in C.C.No.5 of 2017 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore.

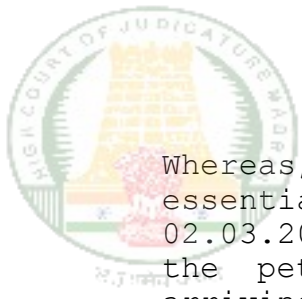
For Petitioner : Mr.E.P.Senniyangiri

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor.

O R D E R

The Criminal Original Petition has been filed to set aside the order dated 02.03.2022, passed in Cr.M.P.No.142 of 2021 in C.C.No.5 of 2017 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore, dismissing the application filed to reopen the case and permit the petitioner to examine herself and one V.Chandramouli as witnesses of defence and to mark legal notice on her side.

2. Learned counsel for the petitioner would submit that the petitioner is arrayed as A3 in C.C.No.5 of 2017 pending on the file of the trial Judge. Her earlier counsel one Mr.V.Chandramouli had sent Ex.D3/copy of legal notice to one Suresh Kumar stating that they were ready for the execution of sale deed. Since the petitioner was admitted in the hospital and taking treatment for diabetes, she was unable to examine herself and her then counsel Mr.V.Chandramouli and had marked Ex.D3 through him. Thereby, the petitioner had filed an application under Section 311 of Cr.P.C seeking to reopen and permit them to examine as defence witnesses.



Whereas, the trial Judge without taking into consideration the essentiality, had dismissed the same vide order dated 02.03.2022. He would further submit that the examination of the petitioner and her earlier counsel is necessary for arriving at a just decision of the case. Thereby, the present petition has been filed.

3. Per contra, the learned Additional Public Prosecutor would submit that the petitioner is arrayed as A3 in C.C.No.5 of 2017, pending trial for the offence under Sections 120(B), 420 IPC and Section 5 of TNPID Act, 1997. The prosecution evidence was commenced on 01.10.2018 and it was closed with 81 witnesses on 05.03.2021. The accused were questioned under Section 313(1)(b) of Cr.P.C and the case has been posted for defence evidence from 28.04.2021 onwards. A2 in this case had examined DW1 and himself as DW2 and the case has been posted for further defence side witnesses from 23.11.2021 and the petitioner did not proceed further and only at the stage when the case was posted for arguments, the present petition has been filed and also the trial Court finding that no materials had been submitted by the petitioner to prove that she was hospitalized and finding that the petition had been filed only to prolong the case, had dismissed the petition.

4. He would also submit that the trial Court had taken into consideration the tactics adopted by the accused to avoid the trial and to delay the proceedings and he opposed to set aside the impugned order.

5. Heard the learned counsel and perused the materials available on record.

6. This Court deems it fit to refer the relevant paragraphs of the order passed by the learned trial Judge as follows:-

5. Admittedly, the prosecution evidence was commenced on 01.10.2018 and closed with Pw81 on 05.03.2021; the accused were questioned under Sec.313(1)(b) of Cr.P.C. on 22.04.2021; and it has been posted for defence evidence from 28.04.2021 onwards; A2 examined one witness as Dw1 on 16.09.2021; and examined himself as Dw2 on 30.09.2021; now, the case has been posted for further Dw's from 23.11.2021 onwards.

6. After closing of the prosecution of evidence on 05.03.2021, the petitioners/accused have filed the following application:-

- A3 filed Cr.M.P.No.1067 of 2021 under Sec.311 of Cr.P.C. to recall Pw1 to Pw72 and Pw81, which was dismissed on 19.04.2021;



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- A3 filed Cr1.O.P.No.7127 of 2021, which was allowed and consequently. Pw1, Pw3, Pw31, Pw55, Pw63 and Pw81 alone were recalled and cross examined;
- A2 filed Cr.M.P.No.1830 of 2021 to send for the police station attendance record under Sec.91 of Cr.P.C., which was dismissed on 05.10.2021;
- A3 filed Cr.M.P.No.1831 of 2021 under Sec.311 of Cr.P.C. to recall Pw81, which was allowed on 05.10.2021 and cross examined;
- Cr.M.P.No.2394 of 2021 under Sec.243 of Cr.P.C. to issue summon to witnesses viz., 1.Proprietor, Hotel Royal Park, Coimbatore; 2.Praveen and 3. S. Vinothkumar, which was dismissed on 08.12.2021;
- A2 filed Cr.M.P.No.26011 of 2021 under Sec.45 of Indian Evidence Act, which was dismissed on 08.02.2022;
- and at that stage, the present applications have been filed by A2.

7. According to the petitioner that due to diabetic treatment in hospital, she was not able to appear before this court and as such, she and her then counsel Chandramouli, who sent Ex.D3 Copy of Legal Notice to one Sureshkumar stating that they are ready for the execution of sale deed. The respondent has contended that the present application has been filed only to drag on the proceedings. On scanning of the records, this court finds that already the said Ex.D3 has been exhibited and admitted by Pw81 Investigating Officer. Thus, the question of again marking the same does not arise. Even if it is necessary, the petitioner should have taken steps at the earlier stage. No evidence has been produced to show that she is a diabetic patient and took treatment on 08.02.2022. The present applications were filed only on 24.02.2022. The reason for not filing the present applications subsequent to 08.09.2022 also not explained. The petition is silent with regard to the name of doctor, name of hospital, period of treatment, nature of treatment, etc., In the absence of evidence, this court feels that there are no sufficient reason to allow these applications. The petitioner/A3 and A2 are in the habit of filing application one after another only to drag on the case, which is



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pending for arguments.

8. As per Sec.233 Cr.P.C., if the accused persons take for issuance of any process for compelling the attendance of any witness or production of any document or thing, the judge shall issue such process unless he considers, for reasons to be recorded that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. This itself clearly indicates that it is not a matter of right that the accused persons can initiate process for compelling any witnesses to be adduced as defence witness. According to the final report, the due is Rs.99,555,300/- in respect of 73 depositors. When the occurrence took place in the year 2016, no steps has been taken to compound the case also. When there is no sufficient reason or cause in the application, this court is not in a position to allow this application. The applications filed to reopen the case and examine A3 and her then counsel was certainly vexatious one and was filed with a purpose to delay the trial and defeat the ends of justice. Considering all aspects, this court declines to allow these applications.

7. The petitioner, being an accused had filed the petition at the stage of arguments. The trial Court finding that the case had been pending for defence evidence from 28.04.2021 and also finding that no supportive documents have been filed by the petitioner to prove that she was taking treatment in the hospital and also taking into consideration the tactics adopted by the petitioner, had dismissed the application.

8. This Court does not find any infirmity in the order passed by the learned trial Judge. It is also noted that the case has been posted for arguments on 29.03.2022. In view of the above, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar



To

1.The Special Judge,
Special Court under TNPID Act,
Coimbatore.

2.The Inspector of Police,
E.O.W-II, Coimbatore.

3.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.E.P.Senniyangiri, Advocate SR. No. 21147

Cr1.O.P.No.6768 of 2022
and
Cr1.M.P.No.3845 of 2022

SKM (CO)
PR (12/04/2022)