



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM

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

CRL.O.P.NO.7692 OF 2022

AND

CRL.M.P.NO.4413 OF 2022

Ravichandiran
S/o.Devendiran

... Petitioner/Accused

.Vs.

The Inspector of Police,
Perambalur Police Station,
Perambalur District.
(Crime No.70 of 2014)

... Respondent/Complainant

PRAYER:-

Criminal Original Petition filed under Section 482 of Cr.P.C., pleaded to call for the records and to set aside the order passed in C.M.P.No.4695 of 2022 in C.C.No.170 of 2014 on the file of the Judicial Magistrate No.1, Perambalur dated 15.03.2022 and consequently permit the petitioner to cross examine the prosecution witness PW1 to PW13 in accordance with law.

For Petitioner : Mr.M.Velmurugan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to set aside the order passed in C.M.P.No.4695 of 2022 in C.C.No.170 of 2014 on the file of the Judicial Magistrate No.1, Perambalur dated 15.03.2022, dismissing the petition filed under Section 311 of Cr.P.C., to recall the witness and consequently permit the petitioner to cross examine the prosecution witnesses PW1 to PW13.



2. The learned counsel for the petitioner would submit that the petitioner is accused facing trial in C.C.No.170 of 2014 for the offence punishable under Sections 279, 338 and 304(A) of IPC. The petitioner is a lorry driver who is uneducated and he is unaware of the Court procedure. He would further submit that the petitioner did not engage an advocate and the learned Trial Judge had also not appointed a legal aid counsel to conduct the case of the petitioner. Due to no proper legal advise, the petitioner has not examined the witnesses who are all police officials. Thereby, the petitioner had filed an application to re-examine the witnesses, whereas, the Trial Court following the mandate of the Hon'ble Apex Court in Vinoth Kumar Vs. State of Punjab reported in 2015 (3) SCC 220 had dismissed the application.

3. The learned counsel for the petitioner would further submit that though there had been serious lapses on the side of the petitioner in not cross-examining the witnesses on the day of when they were examined in chief, he would further submit that if the petitioner is not given an opportunity to re-call and cross-examine the witnesses, it would amount to a case of no defence resulting in grave prejudice. He would further submit that in the event of the petition being allowed, the petitioner undertakes to pay cost to the witnesses and also undertakes to cross-examine the witnesses on the same day of their appearance.

4. The learned counsel for the petitioner would further submit that the case now stands posted on 08.04.2002 for cross-examination of witnesses on the side of defence. He would further submit that on 08.04.2022 the petitioner is also examining few witnesses and he would further submit that the order may be set aside and the petitioner may be permitted to recall and cross-examine the witnesses. He would further submit that most of the witnesses are official witnesses (police witnesses) and some of them are local witnesses who are available.

5. The learned Additional Public Prosecutor for the respondent would submit that the trial Court rightly following the mandate of Vinoth Kumar Vs. State of Punjab reported in 2015 (3) SCC 220, had dismissed the application. However, he would submit that all the witnesses are official witnesses and the respondent will be able to produce them on any date fixed by the Trial Court.



6. Heard both sides and perused the materials available on records.

7. The Trial Court rightly finding that the petitioner had not cross-examined the witnesses and he had not taken steps from the year 2019 to recall the witnesses though an opportunity was given to the petitioner had dismissed the petition. I do not find any infirmity in the order passed by the learned Trial Judge. However, taking into consideration the facts and the submissions made, if a chance is not given to the petitioner to recall and cross-examine the witnesses, it would amount to a case of no defence. Further, in this case as stated by the prosecution, the witnesses are official witnesses and they are also available for cross-examination and this Court in the interest of justice is of the opinion that a chance may be given to the petitioner to recall and cross-examine the witnesses on imposition of cost and terms.

8. In view of the above, a direction is issued to the Trial Judge to fix a date and direct to recall of witnesses PW1 to PW13. The petitioner shall deposit a sum of Rs.26,000/- on the next hearing date. The learned Trial Judge disburse a sum of Rs.2,000/- to each of the witnesses on the date of their appearance. It is made clear that the petitioner shall cross-examine the witnesses on the same day of appearance before the Court. In the event of failing to cross-examine the witnesses on the same day, he will lose further chance to cross-examine them.

9. This Criminal Original Petition stands disposed of with the above observation and direction. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

1. The Judicial Magistrate No.I,
Perambalur.



2. The Inspector of Police,
Perambalur Police Station,
Perambalur District.

3. The Public Prosecutor,
High Court of Madras.

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SJ(CO)
PBS/19/04/2022