



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.8433 of 2022

and

Crl.M.P.No.4926 of 2022

Pownraj,
S/o.A.Vishwanathan

... Petitioner/Accused No.6

Vs

The State rep., by,
The Inspector of Police,
EOW-II,
Erode District.
(Crime.No.5 of 2012)

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, pleaded to set aside the order passed in C.M.P.No.297 of 2022 dated 30.03.2022 in C.C.No.20 of 2012, on the file of Learned Special Judge, Special Court under TNPID Act, Coimbatore.

For Petitioner : Mr.S.Karthikei Balan

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.297 of 2022 dated 30.03.2022 in C.C.No.20 of 2012, on the file of learned Special Judge, Special Court under TNPID Act, Coimbatore, dismissing the petition to recall DW2.

2. The learned counsel for the petitioner would submit that the petitioner/A-6 is facing trial for the offences punishable under Sections 120(b), 406, 420 of IPC and under Section 5 of the TNPID Act, 1997 on the file of the learned Special Judge, TNPID Act Cases, Coimbatore.



3. The case of the prosecution is that the petitioner along with five other persons conspired together and explained about their schemes pertaining to EMU business had canvassed and collected deposits from 289 depositors to the tune of Rs.7,54,88,500/- and cheated them.

4. The learned counsel for the petitioner would further submit that the petitioner was not added as an accused in the original final report and subsequently he was added as an accused by the Trial Court invoking section 319 of Cr.P.C. Thereafter, charges were framed and the prosecution witnesses were examined and the petitioner was also questioned under Section 313(1) of Cr.P.C. Meanwhile, A-3 in this case has filed Crl.M.P.No.2256 of 2021 under Section 311 of Cr.P.C., seeking to summon the Additional Director of Industries and Commerce (DIC), Erode to be examined as a Defense Witness.

5. The learned counsel for the petitioner would further submit that the Trial Court had allowed the petition by an order dated 30.11.2021. The prosecution has also filed in Crl.M.P.No.1955 of 2021 to summon the Additional Director of Industries and Commerce (DIC), Erode to produce the certified copy or true copy of certain documents relating to M/s Alma Emu Farms registered before the Additional Director of Industries and Commerce (DIC), Erode and that application was partly allowed. Aggrieved against the orders passed in Crl.M.P.No.2256 of 2021, the petitioner had filed Crl.O.P.No.25419 of 2021 before this Court. Meanwhile, pursuant to the order passed in Crl.M.P.No.2256 of 2021 by the learned Trial Judge, the Additional Director of Industries and Commerce (DIC), Erode was summoned and he was examined as DW2 by A3.

6. The learned counsel for the petitioner would further submit that since Crl.O.P.No.25419 of 2021 was pending before this Court, the petitioner did not examine DW2 when he was present on Court. While so, Crl.O.P.No.25419 of 2021 was dismissed by this Court by an order dated 03.01.2022 and only thereafter the petitioner had filed Crl.M.P.No.297 of 2022, seeking to recall DW2 for further examination. However, the Trial Court had dismissed the same contending that it was filed for the purpose of delaying the case.

7. The learned counsel for the petitioner would further submit that the case now stands posted at the stage of Defence Witnesses. He would further submit that the examination of DW2 by the petitioner is very much essential for arriving at a just decision in the case. The petitioner has to prove that he has no connection with the above said firm and he would further submit that non-examination of DW2 will cause grave prejudice to the petitioner.



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8. He would further submit that DW2 is now holding the very same post and the petitioner undertakes to examine him on the same day of appearance and the petitioner is also prepared to pay cost for appearance of the witnesses.

9. Per contra, the learned Additional Public Prosecutor for the respondent would submit that A3 had summoned Additional Director of Industries and Commerce, Erode and examined him as DW2. The petitioner wantonly failed to avail the chance when he was present before this court. The Trial Court rightly finding that the petition has been filed to delay the trial had dismissed the same. The learned additional public prosecutor would further submit that earlier on the request of the Additional Director of industries and commerce (DAC), Erode, one G.Thirumurugan, General Manager District Industries Centre, Erode was authorised to give evidence and he had been examined as DW2 and through him exhibits D4 to D6 were marked.

10. Heard the learned counsel for the petitioner and perused the materials available on records including the impugned order.

11. The Trial Court rightly finding that the due opportunity had been granted to the petitioner and also holding that no finding could be recorded that the counsel appointed by the accused were incompetent particularly at the back of such counsel and further finding that fair opportunity had already been given and that the petitioner was filed to delay the trial had dismissed the same.

12. This court finds that the examination of DW2 by the petitioner is essential for arriving at a just decision of the case, since it goes to the root of the case and this court is also of the further opinion that one final chance may be given to the petitioner to recall and examine him on imposition of terms and conditions.

13. In view of the above, the impugned order stands set aside, the trial court is directed to recall DW2, G.Thirumurugan, General Manager District Industries Centre, Erode. The petitioner shall pay the cost of Rs.5,000/- within a week from the date of receipt of a copy of this order. On receipt of payment, the learned Trial Judge shall fix a date for appearance of the witness before the Court on any particular date. On the date of the appearance of the DW2, the petitioner shall examine him without fail. In the event of the petitioner failing to examine the witness on the date of his appearance, he shall lose further chance of examining the witness DW2. The petitioner shall also file an affidavit of undertaking that he will cooperate for speedy disposal of the case. The learned



Trial Judge shall disburse the sum of Rs.5000/- to DW2 on the date of his appearance.

14. Accordingly, the Criminal Original Petition stands allowed and the order passed in C.M.P.No.297 of 2022 dated 30.03.2022 in C.C.No.20 of 2012, on the file of the learned Special Judge, Special Court under TNPID Act, Coimbatore is set aside. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

rgm/rgi

To

1. The Special Judge,
Special Court under TNPID Act,
Coimbatore.
2. Mr.GThirumurugan,
General Manager District Industries Centre,
Erode.
3. The Inspector of Police,
EOW-II,
Erode District.
4. The Public Prosecutor,
High Court of Madras.

CrI.O.P.No.8433 of 2022
and
CrI.M.P.No.4926 of 2022

CNR (CO)
SU(28/04/2022)