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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.Nos.9688 & 9694 of 2022
and
Crl.M.P.Nos.5681 & 5686 of 2022

1. Selvarani Cotton Mills Private Limited,
D.No.36, Park Colony,
Ganapathy Nagar,
Dindugal - 642 003.

2. P.Jeyaram

3. K.Selvarani

... Petitioners
in both Crl.O.P.'s

Vs.

State Represented by
The Inspector of Police,
E.O.W. -II, Coimbatore.
Crime No.14 of 2005.

... Respondent
in both Crl.O.P.'s

PRAYER in Crl.O.P.No.9688 of 2022: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleased to call for records of the order dated 31.03.2022 passed in Cr.M.P.No.306 of 2022 in C.C.No.21 of 2021 on the file of the Special Judge, Special Court under TANPID Act, Coimbatore and set aside the same.

PRAYER in Crl.O.P.No.9694 of 2022: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleased to call for records of the order dated 13.04.2022 passed in Cr.M.P.No.429 of 2022 in C.C.No.21 of 2021 on the file of the Special Judge, Special Court under TANPID Act, Coimbatore and set aside the same.

In both Crl.O.P.'s,

For Petitioners
For Respondent

: Mr.R.Selvakumar
: Mr.A.Gokulakrishnan
Additional Public Prosecutor.



COMMON ORDER

These Criminal Original Petitions have been filed seeking to call for records of the orders passed by the Special Judge, Special Court under TANPID Act, Coimbatore in Cr.M.P.Nos.306 & 429 of 2022 in C.C.No.21 of 2021 vide orders dated 31.03.2022 & 13.04.2022 respectively and set aside the same.

2. Learned counsel for the petitioner would submit that the petitioners/accused are facing trial in C.C.No.21 of 2021 for the offences under Section 409 and 420 of IPC. He would further submit that the first petitioner/A2 is a Private Limited Company and the petitioners 2 and 3 who are arrayed as A13 and A14 respectively are the Directors of the 1st petitioner Company. The Company is not a financial institution, however, it had borrowed money for running the company and since it ran into loss, BIFR proceedings were initiated and ultimately, the Company was taken over by some other group. He would further submit that since they were bereft of certain details, they were unable to cross examine PW1, PW2 and PW9 in an effective manner and thereafter, after change of counsel, the petitioner had filed the applications under Section 311 Cr.P.C in Cr.M.P.No.306 of 2022 to recall PW1 and PW2 and Cr.M.P.No.429 of 2022 to recall the PW9. However, the trial Court had dismissed the same.

3. Learned counsel would submit that though there had been serious lapses on the side of the petitioners in not cross examining the witnesses, the evidence of PW1, PW2 and PW9 is very much essential for arriving at a just decision of the case. If the petitioners are not permitted to cross examine the witnesses, it would result great prejudice to the petitioners. He would further submit that the case now stands posted to 02.05.2022 for examination of defence witnesses and if a date is fixed for cross examining the witnesses, the petitioners would cross examine the witnesses on the date of their appearance without delay, subject to imposition of cost and terms as fixed by this Court.

4. Learned Additional Public Prosecutor would submit that the case now stands posted for examination of defence witnesses on 02.05.2022. He would also submit that the trial Court rightly finding that change of counsel cannot be a ground to recall witnesses and there is no basis to hold that any prejudice will be caused to the accused unless the witnesses are recalled, had dismissed the application.

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



6. The trial Court in the interest of speedy trial had dismissed the application and this Court, does not find any infirmity in the order passed by the learned trial Judge. However, it is the case of the year 2021, this Court is of the opinion that if a chance is not given to the petitioners to recall and cross examine the witnesses, it would result in great prejudice to the petitioners and therefore, in the interest of the fair trial, one more chance may be given to the petitioners to recall and cross examine the witnesses, on imposition of cost and terms.

7. This Court, had on the earlier occasion asked the learned Additional Public Prosecutor to find out whether they will be able to produce the witnesses for cross examination. The learned Additional Public Prosecutor, on instructions from the respondent submitted that the witnesses will be produced on the next hearing date.

8. In view of the above, the orders passed by the Special Judge, Special Court under TANPID Act, Coimbatore in Cr.M.P.Nos.306 & 429 of 2022 in C.C.No.21 of 2021 vide orders dated 31.03.2022 & 13.04.2022 respectively are set aside and the Criminal Original Petitions stand allowed with a direction to the trial Court to fix a date and recall PW1, PW2 and PW9 on the following conditions.

1) The petitioners shall deposit a sum of Rs.15,000/- (Rupees Fifteen Thousand only) before the Trial Court on or before next hearing date i.e., on 02.05.2022.

2) On such amounts being deposited, the learned Trial Judge shall recall the witnesses and fix a date for cross examination.

3) It is made clear that the petitioners shall cross examine the witnesses on the same date of their appearance before the Court and in the event of petitioners failing to cross examine the witnesses on the date of their appearance, they will lose the further chance of cross examining the witnesses.

4) The Trial Judge shall disburse a sum of Rs.5000/- each to PW1, PW2 and PW9, on the date of their appearance.



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5) The petitioners shall give an undertaking that they will cooperate for the speedy disposal of the case and argue the case, once the defence witnesses are closed.

9. Accordingly, these Criminal Original Petitions stand allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

HAM

To

1. The Inspector of Police,
E.O.W. -II, Coimbatore.
2. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.R.Selvakumar, Advocate, S.R.No.29215
+1cc to Mr.R.Selvakumar, Advocate, S.R.No.29216 (29/04/2022)

Cr1.O.P.Nos.9688 & 9694 of 2022
and
Cr1.M.P.Nos.5681 & 5686 of 2022

EV(CO)
TE(28/04/2022)