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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2022
PRONOUNCED ON : 12.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.24640 OF 2021

Josva Rajasekar

...Petitioner

Versus

State rep by:
Inspector of Police,
CBCID Kancheepuram Police Station,
Kancheepuram.
(Crime No.10 of 2007)

...Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside order made in Crl.M.P.No.6609 of 2021 in Spl.C.C.No.2 of 2009, dated 16.11.2021 passed by the Special Judge/Chief Judicial Magistrate, Kancheepuram District at Chengalpattu.

For Petitioner : Mr.N.R.Elango, Senior Counsel for
Mr.L.Ramu

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside, order made in Crl.M.P.No.6609 of 2021 in Special C.C.No.2 of 2009, dated 16.11.2021 passed by the Special Judge/Chief Judicial Magistrate, Kancheepuram District at Chengalpattu.

2.The learned Senior Counsel appearing for the petitioner submitted that during trial, PW1-Daisy Anandraj was examined on 02.12.2016 and the Advocate in the trial Court failed to cross examine PW1 with regard to important aspects of the fact. PW1 and her husband were facing criminal cases all over the State of Tamil Nadu. One such case was pending before the learned Judicial Magistrate, Muthukalathur against PW1/the defacto complainant herein. PW1 herein entered into agreement for settlement and filed Crl.M.P.No.5066 of 2006 before the learned Judicial Magistrate, Muthukalathur. The allegation is that A1



and the petitioner/A2 sold the property belonging to the defacto complainant and failed to deposit the same as per the order in CrI.M.P.No.5066 of 2006, which led to filing of the present case in Special C.C.No.2 of 2009. Thereafter, a petition has been filed before this Court to set aside the order made in CrI.M.P.No.5066 of 2006. When these aspects were put to PW18/Investigating Officer, he answered that he is not aware about the compromise and does not know the result of the said petition in CrI.M.P.No.5066 of 2006. In view of the same, further cross examination of PW1 is necessary.

3.The learned Senior Counsel further submitted that PW1 as well as PW18/Investigating officer are silent and suppressing the truth and hence, further cross examination of PW1 is necessary. The petitioner/A2 after such answer of PW18, he immediately filed a petition under Section 311 Cr.P.C., in CrI.M.P.No.6609 of 2021 in Special C.C.No.2 of 2009 to recall PW1. The trial Court without considering this important aspect, dismissed the petition on the ground that the petition is filed after lapse of 5 years. It is not the number of years, it is the purpose and importance of the witness to be seen. Since the petitioners are facing charges under the Prevention of Corruption Act, the presumption is against them. Assailing these points, the learned Senior Counsel submitted that unless PW1 is recalled for further cross examination, great prejudice would be caused to the petitioner.

4.The learned Additional Public Prosecutor appearing for the respondent strongly objected this petition for recalling PW1 and submitted that the pendency of the case against PW1 before the learned Judicial Magistrate, Muthukalathur would no way affect the present trial. A settlement was arrived in that case between PW1-Deisy Anandraj and the accused. Thereafter, they filed a petition in CrI.M.P.No.5066 of 2006 before the learned Judicial Magistrate, Muthukalathur and filed compromise affidavit and an order came to be passed by the learned Magistrate. Thereafter, A1 and A2 herein failed to deposit the amount before the Court as per the order in CrI.M.P.No.5066 of 2006. In this case, A1 died on 09.08.2020. He further submitted that PW1 sent a representation to the Superintendent of Police, Kancheepuram, complaining about the misappropriation and cheating committed using the power of attorney by A1 and A2 in disposing PW1's property. The accused herein sold the property and failed to deposit the sale deeds and thereby, misappropriated and cheated the creditors. Hence, as per the direction of the Superintendent of Police, Kancheepuram, FIR in Crime No.10 of 2002 came to be registered, for offence under Sections 406, 409, 420 IPC. On the orders of the Director General of Police, the above case in Crime No.10 of 2021 was transferred to the file of the respondent Police.



5.It is further submitted that A3 in this case is the Inspector of Police, DCB Ramnad District. The trial in Crime No.1 of 2006 is pending before the learned Judicial Magistrate, Muthukalathur. PW1 is an accused in that case. A3 took the police custody of PW1 and made arrangement to settle the issue and got the power of attorney executed. On the strength of the same, the accused sold the property of PW1 and misappropriated the amount. Now, the petitioner claiming that some important aspect have been left over and that has to be necessarily put before PW1, cannot be accepted. Further, PW1 has been earlier cross examined on these aspects. Hence, he strongly opposed this petition.

6.This Court considered the rival submissions and perused the materials available on record.

7.The above case in Crime No.10 of 2007 came to be registered based on the complaint of PW1 against A1 and A2. During investigation, it was found that A3/Inspector of Police, DCB Ramnad District, Ramnad, who is the the Investigating Officer in Crime No.1 of 2006, had conspired with the other accused and not complied with the order of the learned Judicial Magistrate, Muthukalathur in CrI.M.P.No.5006 of 2006. Taking advantage of the order, the accused had conspired together and cheated PW1 and misappropriated huge sums of money. Further, the commission of offence attracted provisions of the Prevention of Corruption Act. Now, the case is at the penultimate stage and the case is posted for pronouncing judgment by the trial Court.

8.Admittedly, PW1 was examined on 02.12.2016 and thereafter, other witnesses examined and the accused were questioned under Section 313 Cr.P.C., and now, the case is posted for pronouncing judgment. At this stage, without proper reason, the present petition has been filed. Added to it, PW1 had been cross examined in these aspects earlier. Hence, the present petition is without any plausible reasons.

9.In view of the above, this Court is of the view that filing of this Criminal Original Petition is nothing but to further protract the trial. Hence, this Court is not inclined to set aside the order of the trial Court and the same is hereby confirmed. Accordingly, this Criminal Original Petition stands dismissed.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

vv2



To

1.The Special Judge/Chief Judicial Magistrate,
Kancheepuram District at Chengalpattu.

2.The Inspector of Police,
CBCID Kancheepuram Police Station,
Kancheepuram.

3.The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.24640 of 2021

KSM(CO)
RVM(18/02/2022)