



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.6869 of 2024
and CRL.M.P No.5054 of 2024

Gopalakrishnan

...Petitioner

Vs.

1.The Superintendent of Police,
Crime Branch CID (South Zone), Chennai.

2.Anandeeswaran

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 05.03.2024 passed in CrI.M.P.No.2080 of 2024 in S.C.No.6 of 2022, by allowing this petition.

For Petitioner : Mr.Arun Anbumani for
Mr.P.Rajkumar

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor for R1

ORDER

This criminal original petition has been filed challenging the order passed by the Court below in CrI.M.P.No.2080 of 2024 dated 05.03.2024, dismissing the application filed to defer the cross-examination of PW1 to PW3 till the examination of the other eye witnesses in the case arising out of the police report is completed.



2. Heard Mr. Arun Anbumani, learned counsel appearing on behalf of the petitioner and Mr. A. Damodaran, learned Additional Public Prosecutor appearing on behalf of the 1st respondent.

3. A private complaint was filed which was taken on file in S.C.No.6 of 2022 by the learned Chief Judicial Magistrate, Tiruppur. There are totally six accused persons in this private complaint and the petitioner has been arrayed as A2. This private complaint was taken cognizance for offence under Sections 147, 148, 294(b), 342 and 307 of IPC. In this case, the examination of the witnesses on the side of the complainant was completed and the case was at the stage of questioning under Section 313 of Cr.P.C. Apart from this, there is also a case arisen out of a police report which culminated in C.C.No.92 of 2017, which is pending on the file of the learned Chief Judicial Magistrate, Tiruppur. This case is at the stage of examination of the prosecution witnesses. Apart from the above two cases, there was yet another FIR registered in Crime No.1565 of 2011 which culminated in C.C.No.114 of 2012 which was subsequently renumbered as C.C.No.91 of 2017. The trial in this case is complete and the case is at the stage of pronouncing judgment.

4. The case in S.C.No.22 of 2014 and C.C.No.92 of 2017 were tried by the learned Chief Judicial Magistrate, Tiruppur and a simultaneous trial is conducted in these two cases. The trial initially commenced in C.C.No.92 of 2017. In this case,



three eye witnesses were examined as PW1 to PW3. The petitioner filed an application seeking for deferring the cross-examination of these three witnesses and the said application was also allowed. Subsequently, the examination of witnesses in the private complaint case in S.C.No.6 of 2022 also commenced and even in this case, the petitioner filed an application to defer the cross-examination of the eye witnesses from PW1 to PW3. This application was also allowed, In the course of trial, the examination of witnesses on the side of the complainant was completed.

5.The petitioner filed an application in CrI.M.P.No.2080 of 2024 before the Trial Court with a request that the cross-examination of PW1 to PW3 must be deferred till the prosecution examines all the other eye witnesses shown as LW-6, LW-7 and LW-11 to LW-20.

6.The Court below by an order dated 05.03.2024, dismissed the said application and aggrieved by the same, the present criminal original petition has been filed before this Court.

7.When the matter was taken up for hearing, the learned counsel for the petitioner submitted that on 19.03.2024, when the case came up for hearing, the prosecution seems to have filed an application to dispense with the examination of LW-6, LW-7, LW-10 to LW-20. They wanted to continue with the examination of



witnesses starting from LW-30 onwards to LW-35. Accordingly, the matter was adjourned to 26.03.2024.

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8. In the considered view of this Court, the very purpose of deferring the cross-examination of PW1 to PW3, which was also allowed by the Court below, was to ensure that all the eye witnesses on the side of the prosecution are examined and thereafter, the accused persons get an opportunity to cross-examine those eye witnesses to ensure that there is no improvement made in the version of the eye witnesses by taking advantage of the cross-examination done for the other eye witnesses. When that is so, there is no reason for the Court below to dismiss the application filed in CrI.M.P.No.2080 of 2024. The very purpose for which this application was filed by the accused person was not properly understood by the Court below and the Court below has dismissed the application on the ground that it is not maintainable.

9. Pursuant to the above order, there is yet another development that has taken place in this case. The prosecution seems to have informed the Trial Court that they are not going to examine LW-6, LW-7, LW-10 to LW-20. The other eye witnesses shown in the final report are LW-6, LW-7, LW-11 to LW-20. Now the prosecution wants to give up examining all these eye witnesses. Curiously this has happened after the petitioner filed the earlier application seeking to defer the cross-examination of



PW1 to PW3, till the other eye witnesses are examined on the side of the prosecution. Hence, with the present stand that has been taken by the prosecution, the purpose for which the application was filed by the petitioner no longer exists. However, the examination of witnesses on the side of the prosecution is a decision which is in the hands of the Prosecutor and it is not necessary for this Court to go into the issue as to why the Prosecutor took a decision not to examine the other eye witnesses viz., LW-6, LW-7, LW-11 to LW-20.

10. In the light of the above development, even if the order passed in Crl.M.P.No.2080 of 2024, is set aside, the only eye witnesses left on the side of the prosecution will be PW1 to PW3. Hence, these three eye witnesses can now be cross-examined on the side of the accused, since no other eye witnesses are going to be examined on the side of the prosecution.

11. Whether the accused persons are going to call the witnesses who have been given up on the side of the prosecution as defence witnesses, is a decision that has to be taken by the accused persons and this Court does not want to express any opinion on that.



N.ANAND VENKATESH, J

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12.In the light of the above discussion, it is left open to the Court below to recall PW1 to PW3 and on the date of their appearance all these three witnesses shall be cross-examined on the side of the accused persons. Now the trial Court is at the stage of examination of LW-30 to LW-35. The examination of these witnesses shall be first completed and thereafter, PW1 to PW3 shall be recalled for cross-examination.

13.This criminal original petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed.

21.03.2024

Index: Yes/No
Speaking order/Non-speaking Order
Neutral Citation: Yes/No
SSR

To

- 1.The Superintendent of Police,
Crime Branch CID (South Zone), Chennai.
- 2.The Public Prosecutor,
High Court, Madras.

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