
(2016) 06 MAD CK 0140

MADRAS HIGH COURT (MADURAI BENCH)

Case No: Crl.O.P. (MD) No. 8985 of 2016 and Crl.M.P.(MD) Nos. 4429 and 4430 of 2016

Ilangovan

APPELLANT

Vs

State

RESPONDENT

Date of Decision: June 15, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 311

Citation: (2016) 3 Crimes 440

Hon'ble Judges: Dr. P. Devadass, J.

Bench: Single Bench

Advocate: Mr. M. Subash Babu, Advocate, for the Petitioner; Mr. P. Kandasamy, Govt.
Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Dr. P. Devadass, J.—Aggrieved by the dismissal of his Cr.M.P. No. 137 of 2016 filed under 311 Cr.P.C. on the file of learned Special Judge under the Prevention of Corruption Act Cases, Sivagangai, A2 has directed this revision.

2. A1 to A3 are being prosecuted in the said calender case for certain I.P.C. offences and also for certain white colour offence under Prevention of Corruption Act. The trial of the case is going on and number of witnesses were examined. Now, the I.O. is slated to enter the witness box.

3. At this juncture the said recall petition has been filed. It has been dismissed by the learned Special Judge on the ground that there is delay in recalling the P.Ws. and it is an attempt to derail the trial and it is also a time limit case.

4. The petitioner intends to cross-examine P.Ws.5, 7, 13, 43 and 57. Major portion of the impugned order is from a judgment of the Hon"ble Supreme Court judgment. Following of the decision of a superior Court is laudable. But misapplication of it is

not laudable. Application of a case-law depends on the facts and circumstances of each case.

5. Fixing time limit for the disposal of a case has got its own advantage and disadvantage. Merit is the trial process will be quickened. By fixing time limit, the hands of the trial Court is tied. It will not be allowed to breathe, it will suffocate, because the time limit sword is hanging on its head, the trial Judge tend to turn down even genuine request of adjournment. It is basic that hurried justice will also result in burial of justice. Fixing time for the disposal of a case does not mean ignore principles of law, natural justice, deny reasonable opportunity to the needy. When this Court fixes time limit for the disposal of a case there will be pressure on the trial Court to finish the case. But while doing so, justice and principles of law cannot be finished. While fixing time limit no Court could/should say for the sake of quick disposal do not follow law and finish the case at any cost. Law cannot be sent to quicksand. It is good to remember that sometimes hurried justice promote burial of justice.

6. Trial Courts are expected not to defer the cross of witnesses mechanically as it leads to miscarriage of Justice also. It is being used to gain over the witnesses and the trial Court Judge will be on trial on his remembering capacity. The advice of the Hon"ble Apex Court to the Trial Court is to discourage deferring of cross-examination of witnesses. But what about past cases where cross examination has been already deferred. The Hon"ble Apex Court does not say in such cases do not recall the witnesses. In such cases if recall petition is not entertained how the accused will establish his defence. Accused has a constitutional right to defend himself. (See Article 22(1), 21 Constitution of India and Section 303 Cr.P.C.) Defence must be "effective" and "not cosmetic". Effective defence includes right to cross-examine the witness who gave incriminating evidence. It is also part of principles of natural justice and fundamental judicial procedure. In fact, it is a facet of human right and also become a component of Universal Declaration of Human Rights.

7. Now, in this case, there are three accused, namely, A1 to A3. A1 had cross-examined P.Ws.5, 7, 13, 43 and 57. As on today, the revision petitioner/A2 has not cross-examined these witnesses. Merely on account of delay can he be denied his right of defence. Can he be deprived of his right to cross examine those witnesses.

8. In this respect, the approach of a Criminal Court should differ from a Civil Court. In Civil Court, rights and liabilities of the parties are decided. But in Criminal Court, right to liberty of a person is involved. A slight slip will land him jail. It will affect his family, reputation, his future, life and career. A whole family will be ruined by a wrong judgment.

9. Although as per Article 21, Constitution of India liberty of a person can be taken away, but it should be only in a manner known to law. It should be by a procedure established by law. But the procedure must be "fair" and "reasonable". If right of cross-examination is curtailed without any acceptable basis, then it may not be a fair trial. It will be against the constitutional, statutory and basic right of a person.

10. But at the same time an accused should not be allowed to test the patience of the prosecution and the Court. He shall not be allowed to take the Court for a jolly ride. He should not be allowed to delay the trial process. He should not be allowed to play a gimmick. At any cost, such an attitude should be nipped at the bud. That is the theme of the Hon'ble Apex Court's judgment. Nowhere the Hon'ble Apex Court judgment says that the defence should be prejudiced. Nowhere the said judgment says deprive an accused of his right of defence guaranteed to him under Article 22(1) of the Constitution of India.

11. Now, in this case A1 has cross-examined the witnesses. The Court cannot say it is enough for A2 also. It would be otherwise if A2 has adopted his cross examination. If the Court discern any secret agenda on the part of A2, it can very well avoid it. If his cross-examination of the said witnesses is very vital to his defence, by not allowing him to recall those witnesses for examination the defence will be prejudiced. It is against law.

12. The Court has to consider two things. Right of the accused and also the interest of the State/prosecution. It must strike a balance between these two ends.

13. In the facts and circumstances, if an opportunity is given to the accused, I do not think so heaven will fall on our head.

14. Now, this case which is poised to reach its logical conclusion, the investigation officer is yet to give his evidence. Let the revision petitioner will have his chance to test the veracity of the evidence of P.Ws.5, 7, 13, 43 and 57.

15. In the circumstances, ordered as under:

(1) This Revision is allowed.

(2) The impugned order of the learned Special Judge under the Prevention of Corruption Act at Sivagangai dated 13.05.2016 passed in Cr.M.P.No.137 of 2016 is set aside.

(3) The trial Court will fix dates for the recalling of P.Ws.5, 7, 13, 43 and 57 for their cross-examination in a phased manner taking into account the convenience of the prosecution as well as the defence.

(4) It is made clear that on the date when the witness is present his cross-examination shall not be deferred.

(5) Witness batta covering to and from expenses, daily allowance shall be deposited by the revision petitioner in the trial Court within 3 days of receipt of a copy of this order.

16. Consequently, connected Miscellaneous Petitions are closed.