

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.05.2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRL.R.C.NO.752 OF 2007

Gunasekaran .. Petitioner/Accused.

Vs.

State rep. by
the Sub Inspector of Police,
Ambur Town Police Station,
Vellore District
(Crime No.501/2003) ... Respondent/Complainant.

This criminal revision petition is preferred under Sections 397 and 401 Cr.P.C. against the order passed by the learned Judicial Magistrate, Gudiyatham, Vellore District in Crl.M.P.No.2510 of 2007 in C.C.No.98 of 2007, dated 30.04.2007.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.A.Saravanan,
Govt. Advocate (Crl. Side)

ORDER

The learned counsel for the petitioner has submitted that the petitioner has filed a petition to recall P.Ws.1 to 3, 7 and 8 for clarifying certain vital points in cross-examination before the trial court. The learned Additional Public Prosecutor has raised stiff opposition.

2.The learned Judicial Magistrate, after hearing both sides, has come to the conclusion that only in order to drag on the proceedings, the petition under Section 311 Cr.P.C. has been filed and that recalling of witnesses will not serve any purpose.

3.In this context, it is profitable to extract the relevant provision, namely Section 311 Cr.P.C hereunder:

"S.311. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

4. In order to enable the Court to find out the truth and render a just decision, the salutary provisions of S.311 are enacted whereunder any Court by exercising its discretionary authority at any stage of enquiry, trial or other proceedings can summon any person as witness, etc., and also to re-examine any person already examined, who are expected to be able to throw light upon the matter in dispute. The power conferred under Section 311 Cr.P.C should be invoked by the Court only in the ends of justice. The Honourable Supreme Court has time and again held that once it is found that the evidence is essential for the just decision of the case, the witness can be recalled at any time before pronouncement of the judgment, the time factor would not come in the way.

5. The Honourable Supreme Court had an occasion to examine the scope and ambit of Section 311 Cr.P.C. of the Code in considerable details and illuminatingly formulated the legal principles which throw much light on the subject. The operative portion of the said decision reported in 2004 SCC 158 at 189, ZAHIRA HABIBULLA H.SHEIKH AND ANOTHER Vs. STATE OF GUJARAT AND OTHERS goes thus:-

"The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The Section consists of two parts i.e.: (i) giving a discretion to the Court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the Court. Though the discretion given to the court is very wide, the very width requires a corresponding caution. In Mohanlal V. Union of India this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as, "any court", "at any stage", or "any enquiry or trial or other proceedings", "any person" and "any such person" clearly spells out that the section has expressed in the widest-possible terms and do not limit the discretion of the court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is

essential to the just decision of the case, "essential to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the section is to enable the court to arrive at the truth irrespective of the fact that the prosecution of the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to observe the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth".

Even though the Apex Court has directed to observe caution in exercising discretion under Section 311 of the Code, still it is opined that the Court should not get fettered in the exercise of unearthing or eliciting necessary materials in the evidence collecting process, besides holding that the section confers vast and wide powers on the presiding officers of courts for the said purpose.

6. Adverting to the terminology employed in the provision, the words "at any stage" would include the stage reached when evidence on both sides has been taken and the case is adjourned for judgment. No fixed rules can be laid down in the matter as the interest of justice has been considered paramount. 'Trial' within a meaning of this section terminates with the pronouncement of judgment; until that stage is reached, fresh evidence can be called under this section for the proper decision of the case. An enquiry or trial in a criminal proceeding comes to an end or reaches its finality when the order or judgment is pronounced and until then the court has power to use this section. Section 311 Cr.P.C. is axiomatic in this matter.

7. After hearing both sides, perusing the available records and following the settled principles on this subject, this Court comes to hold that one more opportunity should be afforded to the revision petitioner to invigorate his case at the time of cross examining the witnesses. As per the settled law, a party is entitled to recall any witness at any stage of trial before pronouncing the judgement, of course that right should not be abused.

8. Considering the circumstances in this case, I am inclined to allow this revision petition and direct the learned Judicial Magistrate to allow the petitioner to recall and further cross examine the witnesses. It is also directed that the revision petitioner, after recalling the witnesses, in order to curtail procrastination of proceedings, has to complete their cross examinations on a single day and co-operate with the court for early disposal of the case.

9.In fine, this criminal revision petition is allowed, setting aside the order passed in Crl.M.P.No.2510 of 2007 in C.C.No.98 of 2007, dated 30.04.2007.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vvk/rrg

To

- 1.The Judicial Magistrate,
Gudiyatham, Vellore.
2. -do- through the Chief Judicial Magistrate, Vellore.
- 3.The Sub Inspector of Police,
Ambur Town Police Station,
Vellore District.
- 4.The Public Prosecutor,
High Court,
Madras.

+ 1 CC To Mr.E.Kannadasan, Advocate SR NO.30634

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Gp/25.5.

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