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Gopalakrishnan vs State of Kerala

Gopalakrishnan vs State of Kerala

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Court : Kerala Orders

Decided On : Mar-29-2021

Judge : Honourable Mrs. Justice Shircy V.

Appeal No. : Crl.MC/882/2021

Appellant : Gopalakrishnan

Respondent : State of Kerala

Judgement :

Crl.MC.No.882 OF 2021(A) 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHIRCY V. MONDAY, THE 29TH DAY OF MARCH 2021 / 8TH CHAITHRA, 1943 Crl.MC.No.882 OF 2021(A) CRIME NO.1611/2016 OF Karukachal Police Station , Kottayam PETITIONER/ACCUSED: GOPALAKRISHNAN AGED 58 YEARS S/O. RAMASWAMY ACHARI, CHERUKARATHAZHE HOUSE, KOVELI COLONY, NEDUMKUNNAM VILLAGE, CHANGANACHERRY TALUK, NEDUMANNY P.O.,KOTTAYAM,-686 542 BY ADVS. SRI.A.RAJASIMHAN SRI.SOJAN PAVIYANOSE KUM.VYKHARI.K.U

RESPONDENT/STATE: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM-682 031 OTHER PRESENT: AJITH MURALI -P.P THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29.03.2021, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Crl.MC.No.882 OF 2021(A) 2

ORDER

Aggrieved by the order of the Fast Track Special Judge, Chaganassery in S.C.No.369/2016 to recall two witnesses examined as PW1 and PW2 under Section 311 of the Cr.P.C, the petitioner/accused has filed this Crl.M.C as 882 of 2021.

2. It is contended by the petitioner that after completing

examination of two witnesses as PW1 and PW2, the investigating officer filed an application to recall the witnesses for further examination. The court below without considering the fact that re- examination of PW1 and PW2 on the request of the learned public prosecutor would cause prejudice to the accused allowed the same. The attempt of the learned Public Prosecutor is to fill up the lacuna crept in the evidence, is the grievance of the petitioner/accused.

3. Heard the learned counsel for the petitioner and the learned public prosecutor.

4. The petitioner is the sole accused in S.C.No.369/2016 registered for the offences punishable under Sections 3(a), (d), read with Sec.4, 5(l) read with Sec. 6, 7, 8 of POCSO Act, 2012 & Sec. 377 of IPC. Section 311 of the Code of Criminal Procedure (for short 'Cr.P.C') is reiterated for the sake of convenience which reads as follows: Crl.MC.No.882 OF 2021(A) 3

> 311. Power to summon material witness, or examine person present. Any Court may, at an 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.

5. It is well settled that Section 311 of Cr.P.C cannot be used to

fill up the lacuna crept in the evidence. But if the court feels that for the just decision of the case, at any stage can recall the witness but it should be to render a just decision in that case.

6. Section 311 Cr.P.C permits a trial court to summon any person or witness for examination or for re-examination of any witness already examined to take additional evidence at any stage, but it is well settled that it should be only, when the court finds that

such examination is quite essential to render a just decision in the case. Therefore, the trial court is vested with vast and wide powers to exercise the discretion at any stage of inquiry or trial but such discretion could be exercised only if the court finds that further examination of the witness alone would render a just decision in the case. When the court wants to collect certain relevant facts, omitted when the witnesses were examined earlier can permit or suo motu summon the witnesses for further examination. The said power can be

Crl.MC.No.882 OF 2021(A) 4 exercised at any stage with the ultimate objective, that is to ascertain the truth. But the discretion has to be exercised judicially on satisfaction of the court that such examination is quite essential for the just decision of the case. The trial court has to be vigilant before resorting to such an exercise. The trial court has to verify whether serious prejudice will be caused to the accused by summoning the witnesses and re-examining the witnesses already examined before the court. The wide power vested on the court must definitely be to advance justice by avoiding serious pitfalls on the side of the prosecuting agency. Here, the court below on consideration of the

application filed by the learned Public Prosecutor, specifically stated that for the just determination of the decision of the case, it is essential to recall the witnesses and examine further. When court feels that by inadvertence material evidence

could not be collected and it could be gathered only by re-examination of the witnesses, the court is perfectly correct in allowing the petition filed by the learned public prosecutor by exercising such a power for the just decision of the case. The order under challenge indicates that attempt of the learned

trial court is to find out the real truth so as to render the correct decision in the case. As Section 311 Cr.P.C gives ample power to the court below to recall the witness at any stage of trial to elicit the truth to render a just decision, the discretion has to be exercised judicially,

Crl.MC.No.882 OF 2021(A) 5 otherwise there will be failure to elicit truth for reaching the correct conclusion. It is well settled that if the court feels that there is necessity to act in terms of Section 311 to subserve the cause of justice and to uphold the truth, the power has to be exercised by the court if satisfied with the genuineness of the prayer and not in a routine or casual manner.

7. Here a perusal of the records would show that the victim involved in this case is a minor child. The learned Public Prosecutor by inadvertence omitted to get clarification regarding the statement of the victim on certain aspects and hence moved the petition. The

order clearly indicates that court below had meticulously gone through

petition and as it was found absolutely necessary to discover the relevant facts to render justice, allowed the same and the witnesses were directed to appear before the court for re-examination. When the witness is a child witness and when he or she is called upon to recite the events involved in the case, due to stress or nervousness or mental trauma undergone, there is every possibility to omit to depose certain relevant facts before the court. In such a situation the court must be alert to minimise the error. However the court must evaluate

the evidence carefully with greater circumspection based on the facts

and circumstances of each case. But it is not proper to shutdown the evidence. More over the learned defence lawyer will get an Crl.MC.No.882 OF 2021(A) 6 opportunity for cross examination also. Considering the entire facts involved in this case, I find

absolutely no justifiable reason to interfere with the findings of the court. The learned Counsel though canvassed that prejudice will be caused to the accused if the witness is recalled, could not pinpoint any reason to infer that he will be prejudiced with the decision of the court below. Such being the case, I find no reason to interfere with the decision of the court below. Hence, the I find that the court below is perfectly justified in allowing the petition to enable the court to render a just decision in the case.

Therefore, the order under challenge is confirmed and this Crl.M.C is dismissed. Sd/- SHIRCY V JUDGE 29.03.2021. Crl.MC.No.882 OF 2021(A) 7 APPENDIX PETITIONER'S/S EXHIBITS: ANNEXURE-A1 TRUE COPY OF THE COURT CHARGE DATED 5.8.2020 IN SC NO.369/2016 OF THE COURT OF FAST TRACK SPECIAL JUDGE, CHANGANASSERY ANNEXURE-A2 CERTIFIED COPY OF THE PETITION IN CR.M.P.NO.53/2021 IN SC NO.369/2016 OF THE COURT OF FAST TRACK SPECIAL JUDGE, CHANGANASSERY ANNEXURE-A3 TRUE COPY OF THE OBJECTION FILED BY THE

PETITIONER IN CR.M.P.N.53/2021 IN SC NO.369/2016 OF THE COURT OF FAST TRACK SPECIAL JUDGE, CHANGANASSERY ANNEXURE-A4 CERTIFIED COPY OF THE ORDER DATED 9.2.201 IN CRL.M.P.NO.53/2021 OF IN SC NO.369/2016 OF THE COURT OF FAST TRACK SPECIAL JUDGE, CHANGANASSERY

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