

(2023) 04 KAR CK 0023

In the Karnataka High Court

Case No : Criminal Petition No. 2927, 2929, 2931, 3101 Of 2023

Sharada Patali

APPELLANT

Vs

Directorate Of Enforcement Represented By Its Assistant
Director Government Of India Ministry Of Finance
Department Of Revenue 3rd Floor, B Block, Bmtc Shanthi
Nagar, Kh Road Bengaluru - 560027

RESPONDENT

Date of Decision : 21-04-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 311, 313, 482
Evidence Act, 1872 — Section 80

Citation : (2023) 04 KAR CK 0023

Hon'ble Judges : K. Natarajan, J

Bench : Single Bench

Advocate : Shankar P. Hegde, Madhukar Deshpande, Hegde Shankar Purander

Final Decision : Dismissed

Judgement

K. Natarajan, J

1. CrI.P.Nos.2927/2023, 2848/2023, 2931/2023 and 3101/2023, all these four petitions are filed by the petitioner/accused No.2 under section 482 of Cr.P.C for setting aside the order passed by the Special Judge, Dakshina Kannada, Mangaluru for having rejected the application filed by the petitioner under section 311 Cr.P.C. in Special Case No.128/2016 dated 10.03.2023 for summoning the defense witnesses and also recalling the accused/DW3 and other witnesses for the purpose of further evidence, as per the list of witnesses furnished by the defence.
2. Heard the argument of learned counsel for the petitioner and learned counsel for respondent counsel.
3. The learned counsel for petitioner has contended that the petitioner is facing trial before the special court of the proceeding initiated by the Enforcement

Directorate (ED) against the petitioner. After examination of the prosecution witnesses the statement of the accused was recorded, thereafter, the accused filed list of 15 witnesses and he himself was examined as DW3 and examined total 16 witnesses and some of the witnesses mentioned in the witness list were not preset, therefore it is necessary for him to summon those witnesses to prove his defence.

4. The learned counsel for the petitioner has further contended in Crl.P.No.2929/2023 that there were 14 witnesses examined by the court in the predicate offence, where he has been convicted, therefore the deposition of those witnesses required to be marked in this proceeding which is permissible under section 80 of Evidence Act and a document at Ex.D159 which is property folio marked in the earlier case required to be marked in this case. Therefore it is necessary for himself to recall DW3 for marking those documents.

5. In Crl.P.No.3101/2023 he wants to recall the DW1 and DW3 for further examination, but the same was denied by the trial court, if it is not allowed, his case will be prejudiced. Therefore, prayed for allowing all four applications filed by him and reliefs sought in these four petitions.

6. Per contra learned special counsel has objected the petition and contended that the prosecution case was closed on 12.1.2022 and the statement of the accused under section 313 Cr.P.C was recorded on 22.3.2022, the accused filed list of the witnesses on 1.4.2022 and examined 6 witnesses from April to December 2022. He was unable to keep up his witnesses present he has already filed for recalling application for recalling two witnesses which was allowed by the trial court on 7.1.2023, but they are not present before the court. Therefore, case postponed for final argument, the arguments of the prosecution was completed and during the further hearing this petitioner filed these applications which came to be dismissed on 1.3.2023, 10.3.2023, on 23.3.2023 and thereafter final arguments filed by way of written submissions and the case is reserved for judgment. At this stage, this petition came to be filed, hence prayed for rejecting these petitions.

7. Having heard the arguments and perused the records, which reveals it is an admitted fact, the petitioner was accused before the trial court and after the prosecution evidence, he has produced list of witnesses by showing 15 names but he was able to examine only 6 witnesses and thereafter he has filed application for recalling DW1 and DW3 but those witnesses were not present. Though the trial court allowed the application on the earlier occasion on 7.1.2023, therefore the question of once again filing similar application recalling their own witness does not arises. As the trial court already allowed the application and the same was not availed by the defense counsel and unable to keep them present.

8. That apart, the list of witnesses produced by the accused he was able to keep only 6 witnesses and remaining witnesses were not turned up. Therefore, the

question of once again summoning those witnesses does not arise as the accused himself failed to keep. His own witnesses before the court, therefore the question of summoning those witnesses who are left in the list of witnesses does not arise. The witness cannot be recalled for the purpose of filling up the lacuna. The petitioner himself examined as DW3 he wants to recall himself for the purpose of marking the depositions of the 14 witnesses who are deposed in the predicate offence, and he wants to mark Ex.D159 the property folio. The petitioner accused wants himself to be further examined for the purpose of marking the property P.F.No.159 marked by the Investigating Officer in the earlier case and 14 depositions of the witnesses who were examined before the Court in the earlier case. As per Section 80 of Evidence Act, those documents are produced as record of evidence having a presumptive value. Therefore, the trial court can allow the petitioner to produce those depositions and P.F.No.159 in Ex.D159 by the petitioner counsel along with the memo that can be looked into by the trial Court while final judgment.

10. When the witnesses are already summoned and examined, if they are not present for the second time and some witnesses were not at all kept present by the accused, those witnesses cannot be summoned at the end of the trial, when the accused counsel already argued the matter and filed written arguments and when the matter is posted for judgment. Therefore, I am of the view all the petitions are devoid of merits and liable to be dismissed.

Accordingly, all the petitions are dismissed. However, the learned counsel for the petitioner can produce the depositions and Ex.D159 along with the memo before the trial court which can be looked into by the trial court while appreciating the evidence on record and pass the judgment in accordance with law.