



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2015

CORAM:

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.OP.(MD)No.6621 of 2015

WEB COPY

Susai Michael

: Petitioner

Vs.

State of Tamil Nadu,
Rep by the Inspector of Police,
Vigilance & Anti Corruption Division,
Nagercoil, in Crime No.9 of 2005.

: Respondent

PRAYER: Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 22.01.2015, made in Crl.M.P.No.1301 of 2014, in Special Case No.5 of 2007, on the file of the Special Judge cum Chief Judicial Magistrate, Kanyakumari at Nagercoil.

For Petitioner : Mr.T.Selvakumaran

For Respondent : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor

O R D E R

The petitioner is the sole accused in Special Case No.5 of 2007, on the file of the Special Judge cum Chief Judicial Magistrate, Kanyakumari at Nagercoil. He is facing prosecution for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act 1988. PW-2, in the said case, is the *de facto* complainant, who has spoken about the alleged demand of the illegal gratification made by the petitioner, his giving complaint and the trap proceedings. He was examined on 17.04.2008. But, the petitioner did not choose to cross-examine him on the same day. Subsequently, he filed a petition before the Trial Court seeking to recall PW-2 for the purpose of cross-examination. The said petition was allowed. But, by the time, PW-2 had gone abroad and therefore, he could not be produced. On 26.02.2010, the Lower Court, therefore, recorded that the evidence of PW-2 was eschewed. After PW-2 returned to India, Crl.M.P.No.1301 of 2014 was filed by the prosecution to recall PW-2 for the purpose of cross-examination by the accused. The said petition was allowed by the Lower Court. Challenging the same, the petitioner has come up with the present Criminal Original Petition.

2. I have heard the learned counsel appearing for the petitioner, the learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

3. The learned counsel for the petitioner would submit that if once the evidence is eschewed, there is no scope to recall the same witness. In my considered view, it is not so. In order to do justice, the Trial Court is empowered to recall any witness under Section 311 of the Code of Criminal Procedure, if the Court finds that the examination of the



witness is absolutely necessary to come to the correct conclusion. So far as the delay is concerned, as I have already pointed out, when the petitioner filed a petition to recall PW-2, he had already gone abroad. Therefore, it has taken time for the prosecution to bring him back to the country. Therefore, for the delay, the petitioner has to blame himself.

4. In view of the above, I do not find any infirmity in the order of the Lower Court warranting interference at the hands of this Court. Hence, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(Per.Admn.)

/True copy/

Sub Assistant Registrar

To

1.The Special Judge cum Chief Judicial Magistrate,
Kanyakumari at Nagercoil.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3.The the Inspector of Police,
Vigilance & Anti Corruption Division,
Nagercoil.

+1cc to Mr.T.Selvakumaran,Advocate SR.No.34017

ORDER MADE IN
CRL.OP.(MD)No.6621 of 2015
DATED - 26.06.2015

NB

PA/IV/10.07.2015/2P/5C