

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.O.P.No.19671of 2016

Damodaran

.. Petitioner

Vs.

State rep. by
The Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore. (Crime No.6 of 2007) ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the entire records relating to the order dated 11.05.2012 made in Special Crl.M.P.No.333 of 2012 in Special C.C.No.13 of 2011 on the file of the Special Court for cases under the Prevention of Corruption Act, Coimbatore and set aside the same.

For petitioner : Mr.M.Babu Muthu Meeran
For respondents : Mr.P.Govindarajan, Addl.P.P.

ORDER

This Crl.O.P. is filed to call for the entire records relating to the order dated 11.05.2012 made in Special Crl.M.P.No.333 of 2012 in Special C.C.No.13 of 2011 on the file of the Special Court for cases under the Prevention of Corruption Act, Coimbatore and set aside the same.

2. It is the case of the prosecution that the petitioner in an accused in Special C.C.No.13 of 2011 on the file of the Court below; he was working as Junior Engineer in the Tamil Nadu Electricity Board, Edayarpalayam, Coimbatore; when the de-facto complainant approached him for providing temporary electricity service connection in the name of his wife Seethalakshmi, the petitioner demanded Rs.10,000/- as bribe to receive and process the application, in pursuance of which, on 18.10.2007, a trap was laid and he was shown as accused and arrested for the alleged offences punishable under Sections 7 read with Section

13(2) and 13(1)(d) of the Prevention of Corruption Act. After completion of investigation, charge sheet was filed before the Court below, which was taken on file in Special C.C.No.13 of 2011

3. During the course of trial, the petitioner filed petition under Section 311 Cr.P.C. to recall P.W.2, the de-facto complainant and also P.W.3, who accompanied P.W.2 at the time of the alleged demand made by the petitioner/accused. The chief-examination of P.Ws.2 and 3 was over on 16.11.2011 and they were not cross-examined. It is the grievance of the petitioner that P.Ws.2 and 3 are the key witnesses and their cross-examination is just and necessary to disprove the case of the prosecution, however, their evidence was closed without affording an opportunity for the petitioner/accused to cross-examine them. Hence, pending Spl.C.C., the petitioner filed petition under Section 311 Cr.P.C. in Special Crl.M.P.No.333 of 2012, for the purpose of recalling P.Ws.2 and 3, and the said Spl.Crl.M.P. was dismissed on 11.05.2012, against which, this Crl.O.P. is filed for the relief stated supra.

4. When the Crl.O.P. is taken up for hearing, the only objection raised by the learned Additional Public Prosecutor appearing for the respondent-Police is that the petitioner ought to have filed a Criminal Revision Petition before this Court under Sections 397 and 401 Cr.P.C. as against the impugned order, but instead, the petitioner has filed this Crl.O.P. under Section 482 Cr.P.C. invoking the inherent power of this Court, and hence, on the said ground itself, the Crl.O.P. is liable to be dismissed.

5. On the other hand, it is the submission of the learned counsel for the petitioner that in an identical situation, in the interest of justice, this Court allowed the petition filed under Section 482 Cr.P.C. therein, and the said case is reported in 2015 (1) LW (Crl) 607 (Arumugam and another Vs. The State represented by the Station House Officer) (Crl.O.P.No.11041 of 2015, dated 29.04.2015), wherein, this Court, while permitting the cross-examination of the prosecution witness therein, observed as follows:

"6. We cannot restrict the stage within which Section 311 Cr.P.C. can be invoked. The principle behind Section 311 Cr.P.C., is that the required and relevant evidence has to be brought to the notice of the Court by either side to render correct finding and justice. It is extension of principles of natural justice to criminal law.

7. Now, in the facts and circumstances, the defence has to be facilitated to put up effective defence, otherwise defence will be prejudiced. We also took notice of the submissions of the learned Additional Public Prosecutor. So, striking a balance between the two divergent view, an order with pragmatism has to be passed."

Hence, relying on the above said decision of this Court, learned counsel for the petitioner submitted that the present Crl.O.P. is maintainable.

6. On a perusal of the materials available on record and while applying the said decision of this Court to the facts of this case, I am of the opinion that in the interest of justice, this Crl.O.P. has to be allowed.

7. Accordingly, this Crl.O.P. is allowed. At this juncture, learned counsel for the petitioner submitted that the trial Court has fixed the next date of hearing on 08.09.2016. Hence, the trial Court is directed to permit the petitioner to recall P.Ws.2 and 3 by fixing the next date for their cross-examination by the petitioner herein/accused and the cross-examination of P.Ws.2 and 3 shall be completed on the same day itself, i.e. on the date to be fixed for cross-examination. On such date of cross-examination of P.Ws.2 and 3 to be fixed by the Court below, the petitioner shall pay costs of Rs.1,000/- (Rupees one thousand only) each to P.Ws.2 and 3, directly.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Special Judge for cases under the Prevention of Corruption Act, Coimbatore.

2. The Inspector of Police, Vigilance and Anti-Corruption, Coimbatore
(Crime No.6 of 2007)

3. The Public Prosecutor, High Court, Madras.

1 cc to Public Prosecutor, sr.49492

1 cc to M/s.M.Babu Muthu Meeran, Advocate, sr.48915

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