

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.09.2016

Coram:

THE HON'BLE Mr.JUSTICE M.VENUGOPAL

Crl.O.P.No.21501 of 2016 and
Crl.M.P.No.9945 of 2016

K.Malarvizhi ..Petitioner /Accused No.1

Vs.

State rep. By
Deputy Superintendent of Police,
Vigilance and Anticorruption,
Salem ..Respondent / Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order dated 11.04.2016 made in Crl.M.P.No.220 of 2016 in Spl.C.C.No.116 of 2014 on the file of the Learned Special Judge, (Special Court for Trial of Cases under Prevention of Corruption Act) Salem.

For Petitioner : Mr.K.V.Sridharan
For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

J U D G M E N T

Heard the Learned Counsel for the Petitioner / A.1 and the Learned Additional Public Prosecutor for Respondent / Complainant.

2. According to the Learned Counsel for the Petitioner / A.1, the order of the trial court dated 11.04.2016 in Crl.M.P.No.220 of 2016 in Spl.C.C.No.116 of 2014 on the file of the Learned Special Judge, (Special Court for Trial of Cases under Prevention of Corruption Act), Salem in dismissing the Petition (filed under Section 311 of Cr.P.C) is contrary to Law and further that the trial court in the impugned order had discussed about the facts which are not relevant to the Petition under Section 311 of Cr.P.C.

3. It transpires that the Petitioner / A.1 had filed Crl.M.P.No.220 of 2016 in Spl.C.C.No.116 of 2014 on the file of the trial court stating that "during cross-examination of P.W.2 by Counsel for A.1 certain important suggestions were omitted to be put to her. That was a bonafide mistake and was unintentional". The documents based on which those suggestions were to be put were not available with the Counsel

for A.1. So these questions were not put to P.W.2 and hence prayed for allowing the Petition.

4. Per contra, it is the objection of the Respondent that the present CrI.M.P.No.220 of 2016 before the trial court was filed nearly after lapse of nine months and in fact P.W.2 was severely threatened by the Petitioner / A.1 during trial and the Petition to this aspect was also filed by P.W.2 before the trial court.

5. As far as the present case is concerned, it is not in dispute that P.W.2 was cross examined on behalf of the Petitioner on two days, i.e., 12.06.2015 and 24.06.2015 respectively. At this stage, one cannot ignore an important fact that before the trial court on behalf of the Petitioner / A.1, CrI.M.P.No.220 of 2016 was filed with an inordinate delay of 9 months.

6. It cannot be gainsaid that Section 311 of Cr.P.C., is enacted with a view to enable a Court of Law to find out the truth of the matter and to arrive at a fair and just decision in a given case. The assistance of the ingredients of Section 311 of Cr.P.C., can be sought for by a litigant / party with a purpose of discovering relevant facts or obtaining proper proof of such facts for the just decision of a case. Also that, the power under Section 311 of Cr.P.C., by a Court of Law is not to be exercised in an arbitrary or capricious fashion.

7. In this connection, a reading of the ingredients of Section 311 of Cr.P.C., unerringly point out that the Court can summon the witness or recall a witness at any stage of the trial of a case. So long as the Court is in seisin of the proceedings, the Application / Petition filed under Section 311 of Cr.P.C., is perfectly maintainable in the Eye of Law, as opined by this Court. Moreover the power under Section 311 of Cr.P.C., cannot be exercised to plug the loop holes or to fill up lacunae in the case of prosecution.

8. Suffice it for this Court to point out that even though this Court has wide discretion under Section 311 Cr.P.C., but that exercise of power must be based on reason and justifying materials available in a given case.

9. Insofar as the present case is concerned, admittedly, P.W.2 was cross-examined on behalf of the Petitioner / A.1 on 12.06.2015 and 24.06.2015. The CrI.M.P.No.220 of 2016 before the trial court was filed after a lapse of nearly nine months from the date of cross examination of P.W.2. As such this Court to secure the ends of justice and to prevent an aberration of justice allows the present Criminal Original Petition by setting aside the Order of the trial court dated

11.04.2016 in CrI.M.P.No.220 of 2016 with a rider that the Petitioner / A.1 shall pay TA/DA to P.W.2 at the time of her examination (after recall). In this regard, the Special Judge, (Special Court for Trial of Cases under Prevention of Corruption Act), Salem is to obtain necessary letter of Request / Application from P.W.2 and also to quantify the said TA/DA amount as per Rules.

10. Before parting with the case, this Court abundantly makes it quite clear that only the suggestions which were purportedly omitted to be asked with P.W.2 can be asked for on behalf of the Petitioner's side and at any cost, P.W.2 cannot be cross-examined once again. In this regard, the trial court is to act with care, caution and circumspection. Furthermore, the Petitioner / A.1 Counsel shall cross-examine (P.W.2) in the form of suggestions being put on the same day when P.W.2 appears on the next date of hearing on 05.10.2016 and in this regard on the side of the Petitioner / A.1, no adjournment shall be sought for and granted by the trial court on any score.

11. With the aforesaid observation(s) and direction(s), this Criminal Original Petition is disposed of. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssd

To

1.The Special Judge, (Special court
for Trial of Cases under
Prevention of Corruption Act)
Salem.

2. Deputy Superintendent of Police,
Vigilance and Anticorruption, Salem

3. The Public Prosecutor,
High Court, Madras

1 cc to Mr.K.V.Sridharan, Advocate, sr.53752

CrI.O.P.No.21501 of 2016 and
CrI.M.P.No.9945 of 2016

sv co, kra 17.10.2016