

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2016

CORAM:

THE HON'BLE DR.JUSTICE P.DEVADASS

CrI.O.P. No.6141 of 2016

R.Chandrasekaran

.. Petitioner

Vs.

State by

Additional Superintendent of Police,
Vigilance and Anti-Corruption,
Coimbatore,
Crime No.21/09/AC/CB

.. Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Special CrI.M.P.No.6/2016 in Special C.C.No.15/2011 dated 05/03/2016 on the file of Special Judge Special Court for Cases under Prevention of Corruption Act Coimbatore.

For Petitioner : Mr.Vedavallikumar

For Respondent : Mr.P.Govindarajan
Addl.Public Prosecutor

O R D E R

Aggrieved by the dismissal of CrI.M.P.No.6 of 2016 in Spl.C.C.No.15/2011 by the learned Special Judge under Prevention of Corruption Act at Coimbatore filed under Section 311 Cr.P.C to recall P.W.1 for further cross examination, the sole accused has directed this criminal original petition.

2. The petition is being prosecuted for his alleged commission of certain offences under Prevention of Corruption Act, more particularly, a trap case. In this case, the trial has started. The prosecution witnesses are being produced and examined. Now, the case is nearing completion of recording of prosecution evidence as except investigating officer, other witnesses have been examined.

3. At this juncture, the petitioner/accused has filed a petition under Section 311 Cr.P.C which was dismissed by the trial Court on the ground that no particular reason has been given and already similar petitions were dismissed twice.

4. According to the learned counsel for the petitioner, it has become necessary for the revision petitioner to subject P.W.1 for further cross examination on certain vital aspects which have been omitted to be put to the said witness.

5. The learned counsel for the petitioner would further submit that there is no bar for filing further recall petition and it is not intended to delay or drag on the proceedings and he prays for one opportunity.

6. On the other hand, the learned Additional Public Prosecutor would submit that it is nothing but a delaying tactics and to prolong the trial.

7. I have anxiously considered the rival submissions, perused the impugned order and the materials on record.

8. P.W.1 has been examined to speak about his sanctioning of the prosecution as against the petitioner, a public servant, who is alleged to have committed certain white collar offence.

9. Section 311 Cr.P.C is wide in its scope. It can be resorted to at either side, by defence or prosecution at any time but before pronouncing Judgment. But the Court has to exercise its said discretionary power on sound judicial principles. Normally, such a petition would be discouraged when it is intended to fill up any lacuna or for any delaying tactics and techniques. However, the crux of Section 311 Cr.P.C is to bring to the notice of the Court, the evidence in the possession of either side to enable the court to render a correct finding. The idea behind Section 311 Cr.P.C is to advance cause of justice.

10. Right of the accused assumes paramount consideration in view of Article 21, 22 of the Constitution of India and in view of the decision in *MENAKA GANDHI VS. UNION OF INDIA* (AIR 1978 SC 597)], because right is constitutionally given to the accused to defend himself. It is not 'mere defence'. It must be a 'effective defence'. But at the same time, such a right cannot be misused by defence for any jolly ride or to prolong the matter or any hidden agenda or throwing spokes into the running of the wheel of trial or to derail the trial.

11. The evidence of sanctioning authority also rests upon such technical aspects which is also important in these type of cases. The trial Court need not be carried away by non furnishing of the details of his line of cross examination in the recall petition itself. The Court is also required to keep in its mind the apprehension of the prosecution that it should not be a license to defence to prevent completion of recording of prosecution evidence.

12. In view of the foregoing, the impugned order of the learned Special Judge under Prevention of Corruption Act, Coimbatore passed in M.P.No.6/2016 in Spl.C.C.No.15/2011 on 05.03.2016 is set aside. The said CrlMP stands allowed. The learned Special Judge will recall P.W.1 on 28.3.2016 for his further cross examination by the defence. It is made clear that on that day, no deferring of his cross examination be permitted.

13. Accordingly, this criminal original petition is disposed of.
kua

s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Special Judge,
Special Court for Cases under Prevention of Corruption Act
Coimbatore.
2. The Additional Public Prosecutor,
High Court, Madras.
3. Additional Superintendent of Police,
Vigilance and Anti-Corruption,
Coimbatore .

+ 1 cc to M/s.Vedavallikumar, Advocate, SR 17661

+ 2 ccs to Public Prosecutor, SR 17807

vsn(co)
prk22/3

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