



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

Crl.O.P. (MD) No.13379 of 2016

M.Murugesan

.. Petitioner

Vs.

State rep.by
The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Tirunelveli,
Tirunelveli District
Crime No.2 of 2011.

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and set aside the order dated 31.05.2016 passed in Cr.M.P.No.244 of 2016 in Special Case No.60 of 2014 on the file of the Learned Special Judge/ Special Court for Trail of Cases Under Prevention of Corruption Act, Tirunelveli, Tirunelveli District.

For Petitioner : Mr.A.Thiruvadikumar

For Respondent : Mr.P.Kandasamy

Government Advocate.

(Criminal side)

ORDER

This is an application challenging the order dated 31.05.2016 passed in Cr.M.P.No.244 of 2016 in Special Case No.60 of 2014, refusing to recall PW3.

2.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondent.

3. Dismissal of the petition to recall P.W.3 is justified or not is the issue to be considered.

4. Learned counsel for the petitioner/accused submits that the principle of fair trial requires that an opportunity should be afforded to the petitioner to cross examine P.W.3 and therefore, the petition to recall P.W.3 has to be allowed.

5. Learned Government Advocate (Crl.Side) would submit that if the petition to recall is allowed, it would cause prejudice to the prosecution, as the witness is likely to be won over.

5.1. Learned counsel appearing for the accused would submit that no such attempt would be made and this may be recorded as an undertaking. It is further pointed out that even if the

witness turns hostile, it is open to the prosecution to treat the witness as hostile and cross examine the witness.

6. Therefore, this petition is allowed and the order passed in Cr.M.P.No.244 of 2016 in Special Case No.60 of 2014 by the Special Judge/Special Court for Trial of Cases under Prevention of Corruption Act, Tirunelveli, Tirunelveli District is set aside and P.W.3 is permitted to be recalled subject to the condition that there should not be any attempt on the part of the petitioner/accused to tamper with the witness. It is also pointed out that PW3 is working as a Junior Assistant in Municipality. Therefore, he may know the value of offering evidence in truth. However, if the Court after hearing the arguments on both sides, have any clue that the witnesses would have been tampered, it is open to the Court to initiate action against the accused to meet the ends of justice.

Sd/-

Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Special Judge/ Special Court for Trail of Cases
under Prevention of Corruption Act, Tirunelveli,
Tirunelveli District.
- 2.The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Tirunelveli,Tirunelveli District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.A.THIRUVADIKUMAR,ADVOCATE SR NO:41400

JA-AAL-MPA-08.09.2016/2P:5C

Cr1.O.P. (MD)No.13379 of 2016
02.08.2016