



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

Cr1.O.P.(MD) No.9435 of 2016
and Cr1.M.P.(MD) Nos.4449 and 4741 of 2016

Palanivel

... Petitioner/Petitioner/
Accused No.3

-vs-

State through: -
The Inspector of Police,
Vigilance and Anti Corruption,
In Crime No.5/1989,
Sivagangai District.

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed, under Section 482 Cr.P.C., to set aside the order passed by the learned Special Judge Prevention of Corruption Cases, Sivagangai in Cr.M.P.No.138 of 2016 dated 13.05.2016 in C.C.No.1 of 2014.

For Petitioner: Mr.M.Subash Babu

For Respondent: Mr.P.Kandasamy
Govt.Advocate (Cr1.Side)

O R D E R

Aggrieved by the dismissal of his Cr.M.P.No.138 of 2016 filed under 311 Cr.P.C. on the file of learned Special Judge under the Prevention of Corruption Act Cases, Sivagangai, A3 has directed this revision.

2.A3 a public servant along with other accused is being prosecuted before the said Special Judge for certain alleged commission of criminal misconduct. Examination of prosecution witnesses is going on. He filed a petition under Section 311 Cr.P.C. for recalling P.Ws.8 and 18.

3.The learned Magistrate quoting **VINOD KUMAR Vs. STATE OF PUNJAB [AIR 2015 SC 1206]**, dismissed the petition.



4.A decision should be applied when the facts of the case warrants such application. Application of case law depends on facts and circumstances of each case.

5.Now, in this case it is seen from para 17 of the impugned order, the learned Special Judge himself observed that already a send for petition was allowed and documents were also received. Referring to the said documents A3 wants to cross-examine P.Ws.8 and 18. The Court has to consider whether such additional evidence in the form of further cross-examination of P.Ws.8 and 18 is just and necessary for the disposal of the case. (See section 138 Evidence Act, **RAJARAM PRASAD YADAV Vs. STATE OF BIHAR [2013(14) SCC 461]** and **STATE (NCT OF DELHI) Vs. SHIVKUMAR YADAV [2016 (1) SCC (Cri) 510]**.)

6.The Court has to see whether the recalling of the witness is just and necessary, whether it is an attempt to drag on the proceedings or attempt to fill up the lacuna or an attempt to waste the time of the Court, whether there is evil design to delay progress of the trial. The approach of the trial Court is not correct. In as much as send for petition was allowed and documents were also received by the Court and the defence wants to put up an effective defence by cross-examining P.Ws.8 and 18 with respect to the newly received documents, a valid ground has been made for recalling P.Ws.8 and 18.

7.In the circumstances, ordered as under:

(1) This Revision is allowed.

(2) The impugned order of the learned Special Judge under the Prevention of Corruption Act at Sivagangai dated 13.05.2016 passed in Cr.M.P.No.138 of 2016 is set aside.

(3) The trial Court will fix date for the recalling of P.Ws.8 and 18 for their cross-examination after taking into account the convenience of the prosecution as well as the defence.

(4) It is made clear that on the date when the witnesses are present their cross-examination shall not be deferred.

(5) Witness batta covering to and from expenses, daily allowance for those witnesses shall be deposited by the revision petitioner in the trial Court within 3 days of receipt of a copy of this order.

Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar



To:

1.The Special Judge,
under Special Court for Prevention of Corruption Act,
Sivagangai.

WEB COPY

2.The Inspector of Police,
Vigilance and Anti Corruption,
Sivagangai District @ Sivagangai.

3.The Government Advocate (Criminal Side)
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.M.Subash Babu, Advocate SR.No.32444

sm:PEK:29.06.2016:3P/5C

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