

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 06.06.2017

Coram:-

The Hon'ble Mr. Justice N.SATHISH KUMAR

CrI.O.P. No.5812 of 2017

Arul Jothi Murugan A/44
Sub Inspector of Police,
R5 Virugambakkam p.s.
Chennai

... Petitioner

vs.

State by
Inspector of Police,
Vigilance and Anti Corruption,
Chennai City II Detachment
Nandanam,
Chennai - 35

... Respondent

Petition under Section 482 of the Code of Criminal Procedure to set aside the order of the Honble Special Judge for the cases under Prevention of Corruption Act, at Chennai in CrI.M.P.No.349 of 2017 in C.C.No. 113 of 2011 and direct the respondent to produce the witness P.W-9 Mr.Gauthaman for further cross examination.

For petitioner : Mr.S.Xavier Felix

For respondent : Mr.E.Raja
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed as against the dismissal of the order passed by the trial court for recalling PW9 the Trap Laying Officer for further Cross examination by the Defence Counsel.

2. The learned Defence Counsel submitted that he has been recently engaged by the Petitioner/Accused. The previous counsel appeared for the petitioner/accused has omitted certain important vital questions with regard to the Trap Laying. Those

questions are relevant and to be elicited from P.W-9. Therefore, the learned counsel submitted that one more chance may be given to the Accused to establish his defence and he is also prepared to cross-examine the witness on the same day without any further delay. Hence, prayed for allowing the petition.

3. The learned Additional Public Prosecutor submitted that the prosecution evidence is over and the case is adjourned to 07.06.2017 for examination the accused under Section 313 of Cr.P.C. However, submitted that if the witness is cross-examined on the same day, the prosecution has no objection for bringing the witness.

4. Taking into consideration of the submissions of the learned counsel, learned Additional Public Prosecutor and the orders of the trial Court, I am of the view that though the trial Court can exercise the discretion at any stage of the trial to recall the witness for the proper adjudication of the case, at the same time, if the very nature of recalling of the witness and defence of the accused is to protract the trial, such petitions cannot be entertained for the sake of filing by the counsels. However, it is the contention of the learned counsel for the petitioner that certain vital questions with regard to the Trap Laying has been omitted by the previous counsel, burden lies on the accused to disprove the alleged trap laying.

5. Taking into consideration of such submissions, I am of the view that being the offence charged for Prevention of Corruption, and the burden is also lies on the accused to disprove the trap laying, I am of the view that one more last chance may be granted to the petitioner/accused to elicit certain vital questions by further cross-examination P.W-9 the Trap Laying Officer. Accordingly, recall petition is allowed and the order of the trial Court is set aside. The prosecution shall produce P.W.-9 for further cross-examination by the petitioner on the next date of hearing and the cross-examination shall be completed on the same day as and when P.W-9 present in the Court. In the event of failure in cross-examination of the witness P.W-9 when present in the Court, the petitioner would lose his chance for further cross-examination.

6. With this observation, this petition is allowed. After completion of further cross-examination of P.W-9, the trial Court is directed to dispose of the main case within a period of two months from today.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

MSRM/GR

To

The Inspector of Police,
Vigilance and Anti Corruption,
Chennai City II Detachment
Nandanam,
Chennai - 35.

+1 cc to M/s.S.Xavier Felix Advocate sr 40220

Cr1.O.P. No.5812 of 2017

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