

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2017

PRONOUNCED ON : 06.11.2017

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

**Criminal Original Petition No.21904 of 2017**

1.N.Giri Prasad  
2.Vijayakumari Prasad

.. Petitioners

Vs

State rep. By  
Deputy Superintendent of Police,  
ACB/CBI/SPE,  
Chennai.

.. Respondent

**Prayer:-** Criminal Original Petition has been filed under Section 482 Cr.P.C., to set aside the order dated 31.08.2017 in CrI.M.P.No.3608 of 2017 in C.C.No.8 of 2011 passed by the learned Principal Special Judge for CBI cases at Chennai.

For Petitioners

: Mr.A.V.Somasundaram

For Respondent

: Mr.K.Srinivasan,  
Special Public Prosecutor (CBI Cases)

**ORDER**

The petitioners are A.1 and A2 in C.C.No.8 of 2011 pending on the file of the learned Principal Special Judge for CBI cases, Chennai. The petitioners herein have moved a petition before the trial Court under Section 311 Cr.P.C., to recall petition mentioned witnesses for the purpose of examination and marking the relevant documents. The witnesses sought to be examined are as follows:-

- 1.The Sub Registrar, SRO, Guduvancheri;
- 2.The Sub-Registrar, SRO, Vellore;
- 3.N.Raja & Associates, Auditor, T.Nagar;
- 4.Nagendran, Manager, Mylapore Branch, Indian Bank;
- 5.The Manager, Andhra Mahila Sabham Mylapore;
- 6.The Manager, Indian Bank, East Abiramapuram Branch, Chennai;
- 7.Bastin Paul, Assistant Vice President, UTI, Sembakkam, Chennai;
- 8.The Superintendent (P), Rewards Section (Air) New Custom House, Chennai;
- 9.The CPIO, Custom House, Chennai and
- 10.Savitha, Executive Assistant, Accounts Department, Customs House, Chennai."

2. According to the petitioners, it is mandatory and imperative to examine the above mentioned list of witnesses as per the dictum laid down in **Narendra Kumar Mohnot vs. State** reported in 2001 Cri.L.J 1605 (Madras) so as to arrive at just decision in the case. It is contended by the petitioners that these witnesses are vital witnesses hence, they have to be summoned for the purpose of marking vital and relevant documents which would have a reasonable opportunity to the petitioners to defend and to prove their innocence. If the request is not acceded, it will cause prejudice to the petitioners.

3. The trial Court after considering the said petition and the endorsement made by the learned Special Public Prosecutor (CBI cases) that the accused statement under Section 313 Cr.P.C., was recorded on 19<sup>th</sup> and 20<sup>th</sup> January 2016. Thereafter, two witnesses were examined on behalf of the defence on 12.02.2016 and 12.04.2016. Till, 18.08.2017, the accused have not produced any further defence witness. After prolonging the trial, without examining any defence witness, after 18.08.2017, the present petition is filed to summon 10 witnesses.

4. The trial Court has dismissed the petition for the reason that the prosecution has closed their side evidence on 21.12.2015 and

the accused were examined under Section 313 Cr.P.C., on 19<sup>th</sup> and 20<sup>th</sup> January 2016. Thereafter, the defence submitted list of witnesses to be examined on their side. In the said petition, they have mentioned 5 witnesses namely, (1)V.C.Palani; (2)V.Rajendran; (3)R.Palani; (4) N.Panchatchari and (5) K.Sarangapani. However, till 18.08.2017, only two witnesses were examined. In the mean while, an affidavit was filed under Section 296 Cr.P.C., to accept the affidavit and read in evidence filed by the defence witness - N.Panchatchari and the same was allowed by the trial Court on 05.07.2016, in Crl.M.P.No.3154 of 2016.

5.Unsatisfied with the said order, CBI preferred revision before the High Court in Crl.R.C.No.1033 of 2016 and the same was allowed by the trial Court on 10.01.2017 holding that N.Panchatchari, being the mother of public servant who is prosecuted and her evidence is not a formal character to be taken on affidavit. Hence, the order passed by the trial Court dated 05.07.2016 was set aside.

6.Thereafter, the petitioners have filed another petition in Crl.M.P.No.1670 of 2017 under Section 294 Cr.P.C., to admit or deny the genuineness of certain documents listed in the said petition. The trial Court has dismissed the petition on 31.07.2017. Thereafter, fresh petition is filed under Section 311 Cr.P.C., to examine 10 new

witnesses on behalf of the defence. The trial Court has dismissed this petition on the ground that all the 10 cited witnesses are new and are all government employees or the bank employees.

7. Already, the petitioners/accused have filed petition to examine five witnesses on their behalf and the same was allowed by the trial Court. Out of five witnesses, the defence has examined only two witnesses and dispensed examination of two witnesses, namely, P.Rajentren and K.Sarangapani but, has not chosen to dispense the examination of N.Panchatchari indicating that they are going to examine her as one of the defence witness. While so, after dismissal of those petitions, fresh petition is taken out now under Section 311 Cr.P.C., to examine 10 new witnesses which is only an indication to prolong the proceedings. Aggrieved by the same, the present petition is filed.

8. The learned counsel for the petitioners submitted that the valuable right of the accused person is totally been deprived of by means of impugned order. In the case of accumulation of disproportionate asset, the accused persons are entitled to place all the material records to show the source of income which has not been taken note by the prosecution during investigation. When an attempt to mark the income tax returns of N.Panchatchari under



Section 294 Cr.P.C., the prosecution for the best reason nown opposed the petition and the same was upheld by the Court. Though, the income tax returns are all public documents, no formal proof of it require could have been very well accepted under Section 294 Cr.P.C. However, the trial Court has declined to entertain the petition on the ground that the original documents to be filed and to be proved through relevant witnesses. The request to take the affidavit of N.Panchatchari as evidence has also been declined by the trial Court.

9. When the petitioners/accused sought leave of the Court to examine certain witnesses who are Sub Registrars of Guduvancherry and Vellore, Bank Managers of Indian Bank Mylapore Branch and East Abirampuram Branch and some of the officials of customs department, the said genuine request has been turned down by the Court attributing motive from the petitioners for prolonging the trial.

10. Per contra, the learned Special Public Prosecutor (CBI cases) appearing for the respondent submitted that the petition filed under Section 311 Cr.P.C., to summon 10 witnesses on behalf fo the defence side was filed on 18.08.2016, long after the prosecution closed its evidence on 21.12.2015 and after examining the accused under Section 313 Cr.P.C., on 19<sup>th</sup> and 20<sup>th</sup> January 2016.

11.Further, the learned Special Public Prosecutor drew the attention of this Court to Section 243 Cr.P.C., which reads as follows:-

"243.Evidence for defence.

(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross- examination, or the production of any document or other thing, the Magistrate shall issue such. process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing: Provided that, when the accused has cross- examined or had the opportunity of cross- examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court. B.- Cases instituted otherwise than on police report”.

In this context, it is useful to extract Section 22 of the Prevention of Corruption Act:-

“22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,—

(a) in sub-section (1) of section 243, for the words “The accused shall then be called upon”, the words “The accused shall then be required to give in writing at once or within such time as the court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon” had been substituted;”



12. On considering the rival contentions made by the learned counsels on either side, the facts of the case reveals that the present petition filed under Section 311 Cr.P.C., though mentions about new witnesses to be examined on the side of the accused, there is no reference about the documents or facts, on which, they are supposed to be examined. Further, as pointed out by the prosecution, this petition is taken not immediately after examining the accused under Section 313 Cr.P.C., but after sufficient delay. In the said context, Section 243 Cr.P.C., and Section 22 of the Prevention of Corruption Act as significant. On combined reading of Section 243 Cr.P.C., and Section 22 of the Prevention of Corruption Act, it is very clear to the mind of this Court that the trial Court has rightly dismissed the petition and there is no irregularity or illegality in the said order.

13. Under the Scheme of Criminal Procedure Code, after recording evidence for prosecution under Section 242 Cr.P.C., incriminating material against the accused persons is put to them, affording opportunity to them, to explain the circumstances appearing in the evidence against them. Further, under Section 243 Cr.P.C., the accused are given liberty to call upon to enter upon evidence and produce the same. In so far as offences under the Prevention of Corruption Act, the accused shall furnish the list of

person, if any, whom he proposes to examine as witness and all the document, if any, on which, he proposes to rely and these witnesses shall then be called upon. So, Section 22 of the Prevention of Corruption Act, madates the accused persons to furnish list of witnesses as well as the documents, he proposes to rely and this has to be done at the earliest point of time i.e., immediately after completion of examining the prosecution witnesses and cannot be in piecemeal (as in this case) and if the Magistrate is of the opinion that such petition is filed for the purpose of vexation or to delay the process or to defeat the ends of justice, he can refuse such petition.

14.From the facts narrated above, it is clear as crystal that after examination of the prosecution witnesses, earlier application to examine defence witness was allowed. Out of 5 witnesses listed, the petitioners have examined only two witnesses and dispensed the other two witnesses and in so far 5<sup>th</sup> witness namely N.Panchatchari is concerned, they have neither examined her nor dispensed the examination of the witness. The present petition is filed with new set of witnesses without any particulars for the purpose for which they have to be summoned. This clearly indicates the after-thought of the petitioners and the ulterior intention to prolong the litigation.

15.The judgment cited by the petitioners in **Narendra Kumar**

**Mohnot vs. State** (cited supra) is arising out of petition filed under Section 311 Cr.P.C., in a case prosecuted for I.P.C., offences. Wherein, the prosecution has failed to include some of the witnesses in the list of witnesses though such persons were important witnesses to enable the trial Court to arrive at just decision. The omission was on the part of the prosecution and later point of time, the prosecution felt that these witnesses would be included as additional witness. The same was opposed by the accused persons on the ground that out of five persons sought to be added as additional evidence for prosecution, four persons were earlier arrayed as accused and there is no previous statement of them recorded under Section 161 Cr.P.C.

16. In the said context, this Court has held that the objection raised by the accused persons are unsustainable. Summoning the five witnesses to be examined as prosecution witnesses is essential for taking just decision by the trial Court.

17. The factual matrix of the present case is totally different. This case arises under the Prevention of Corruption Act, unlike the case cited which was for prosecution under Indian Penal Code alone. So, in additions to Sections 243 and 311 Cr.P.C., in cases prosecuted for offence under the Prevention of Corruption Act, such a request is

always subject to the provision of the special act namely, Section 22 of the Prevention of Corruption Act.

18. In view of the foregoing discussions, this Court finds no infirmity in the order passed by the trial Court. Accordingly, the order passed by the trial Court dated 31.08.2017 in CrI.M.P.No.3608 of 2017 in C.C.No.8 of 2011, is confirmed and the Criminal Original Petition is dismissed.

**06.11.2017**

jbm

Index: Yes  
Speaking Order/non speaking order

To

1. The Principal Special Judge  
for CBI cases at Chennai.

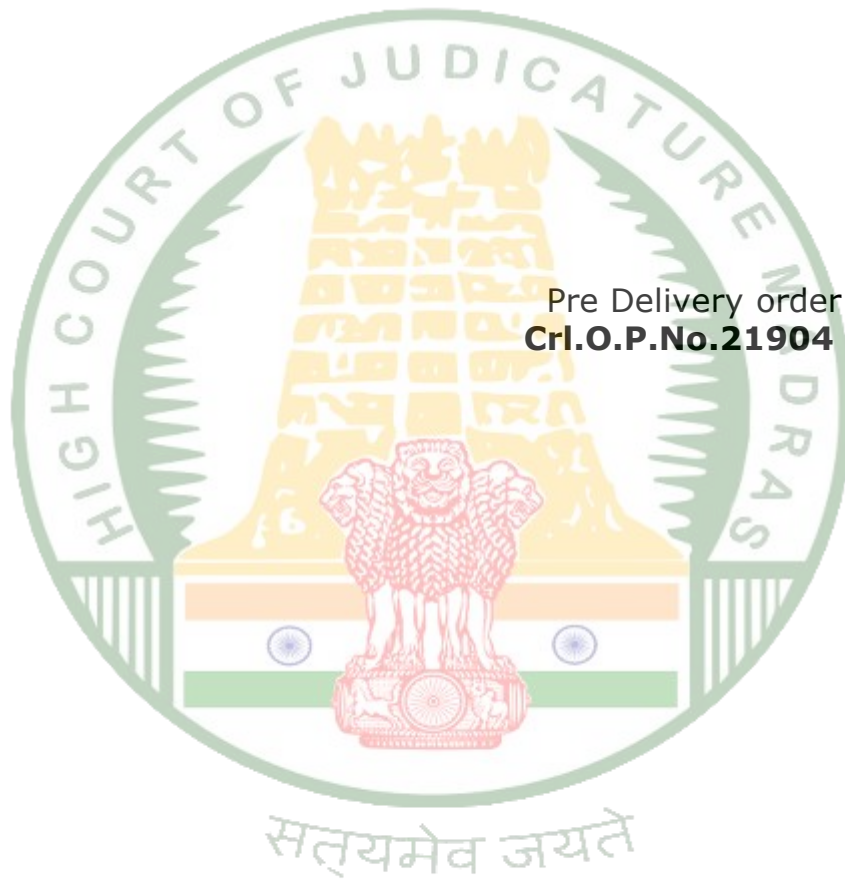
2. Deputy Superintendent of Police,  
ACB/CBI/SPE,  
Chennai.

3. The Special Public Prosecutor, CBI cases  
High Court, Madras.

WEB COPY

**G.JAYACHANDRAN.J.,**

jbm



Pre Delivery order made in  
**Cri.O.P.No.21904 of 2017**

**WEB COPY**

**06.11.2017**