

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.09.2018
CORAM:
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.O.P.No.20849 of 2018

1.P.S.Murugesan
2.Balasundaram
3.P.Natarajan

... Petitioners/Petitioners/
Accused No.1,3 and 4

/Vs/

The State represented by
Deputy Superintendent of Police
Vigilance and Anti Corruption Wing
Erode.
(Crime No. 2/Ac/2011/ER)

...Respondent/Respondent/
Complainant

PRAYER: Criminal Original Petition filed under section 482 of Code of Criminal Procedure to set aside the order dated 31.07.2018 made in Crl.M.P. No.2172 of 2018 in Special C.C. No.40 of 2015 on the file of the Court of the Chief Judicial Magistrate/Special Judge at Erode.

For Petitioner : Mr.C.E.Pratap

For Respondent : Mr. Prabhakar
Additional Public Prosecutor

O R D E R

The petitioners are respectively accused No.1, 3 and 4 facing trial in Special C.C.No.40 of 2015 on the file of the Chief Judicial Magistrate/Special Judge, Erode for the offences under Sections 120-B r/w 167, 409, 465, 468, 471, 477 of IPC and Section 13(2) r/w 13(1)(c), 13(1)(d) of Prevention of Corruption Act.

2. The petitioners had filed a petition seeking to recall PW1, Kumarasamy, PW2 Parameswaran, PW3 P.C.Krishnamoorthy and PW4. Shanthakumar on the ground that due to non-availability of essential documents and particulars, the petitioners could not cross examine PW's to 4 instantly and that the answers and evidence to be elucidated from PW1 to PW4 is very essential to arrive at just decision of the case and prayed for recalling the witnesses to be cross examined.

3. The complainant had filed a counter stating that the petition had been filed after a period of more than one year after examination of PW1 and PW2 and 11 months after examination of PW3 and 3 months after examination of PW4.

Further, in the counter, the complainant had stated that no petition to defer the cross examination has also been filed. The learned trial Judge taking into consideration that there is a delay in filing the petition and that the petitioner has not filed a petition to defer cross examination and also relying on the judgement in Vinod kumar vs. State of Punjab had dismissed the petition.

4. The learned counsel for the petitioners would submit that though there had been a delay, would submit that the delay would not in any way cause prejudice to the prosecution. The learned counsel for the petitioners would further submit that there are totally 39 witnesses in this case and so far, only four have been examined and would submit that the witnesses are also official witnesses and no prejudice would be caused to the prosecution by recalling the witnesses. He would also submit that each case has to be looked into on the facts and circumstances of the case and that the petition ought not to have been dismissed by straight jacket formula that there has been a delay. He would further submit that the petitioners are prepared to pay necessary charges for attendance of the witnesses before the court and he would also submit that if a specific time frame is fixed for recalling the witnesses and cross examining them, the petitioners will take steps to cross examine them on the specific dates fixed by the trial Court and that the petitioners undertake that they will not take adjournment for cross examination on the appearance of the witnesses before the court. The learned counsel for the petitioners would further submit that though the petition has been filed to recall PW1 to PW4, the petitioners would now restrict themselves to recall PW1 to PW3 alone. He would also submit that the cross examination has to be done in respect of certain documents which have been either marked through or referred by PW1 to PW3 and would submit that their cross examination is very much essential. The following are the documents.

S.No.	Description of Documents	List of Documents
1	Minute book of Thattampalayam PACS for the period from 06.08.2004 to 07.01.2009, containing the resolutions dated 24.03.2006, 20.04.2006 and 08.05.2006. It also contains the resolution passed by Special Officer Govindan dated 05.08.2006 for waiver of agricultural loan, the resolution passed by Arivazhagan ratifying the AJLS etc.	L.D.6 Refer: Page 55 of Charge Sheet

S.No.	Description of Documents	List of Documents
2	Attested Copy of the list of Agricultural Waiver particulars as on 31.03.2006 of Thattampalayam PACB obtained from Erode District Central Co-operative Bank Ltd. (Pages 1 to 80)	L.D 15 Refer: Page 56 of Charge Sheet Ex.P5
3	Attested copy of circular in RC.No.167508/2004CBP1, dated 30.11.2004 of Co-operative Department.	L.D.11 Refer: Page 56 of Charge Sheet
4	Circular in RC.No.4837/1997-98/Ca dated 24.12.2004 of Co-operative Department	L.D.12 Refer: Page 56 of Charge Sheet

The first document which has been relied on by the prosecution is listed as L.D No.6 and it has been referred in page 55 of the charge sheet and though it has been spoken about by PW3, it has not been marked in the court. The second document has been referred as L.D-15 at page 56 of the charge sheet and it has been marked as Ex.P5 through PW2. The third document has been referred as L.D-11 at page 56 of the charge sheet and it has been marked as Ex.P2 through PW2 and the fourth document has been referred as L.D-12 at page 56 of the charge sheet and it has been marked as Ex.P3 through PW1. PW2 has spoken about Ex.P2 and P3.

5. The Additional Public Prosecutor would fairly submit that there are totally 39 witnesses in this case and that 5 witnesses have been examined so far and he would submit that subject to the availability of the witnesses and in consultation with the prosecutor appearing before the trial Court, specific dates may be fixed for appearance of PW1 to PW3 and that directions may be issued to the petitioners that they should cross examine the witnesses on the date of appearance before the trial Court without any delay. He would also suggest that the different dates may be fixed for appearance of the witnesses and that the petitioner shall cross examine them on their date of appearance without any delay and the petitioners should restrict their cross examination in respect of the documents mentioned above and complete the cross examination on the same day of their appearance.

6. Taking into consideration the submission made by the learned counsels, the order passed by the trial Court in CrI.M.P.No.2172 of 2018 in Special C.C.No.40 of 2015 dated 31.07.2018 is set aside and the petition to recall the witnesses PW1 to PW3 is allowed. The trial Court shall fix a date for the appearance of the witnesses in consultation with

the counsel for the petitioners as well as the Public Prosecutor and the petitioner shall cross examine the witnesses on the date of appearance without taking any adjournment.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

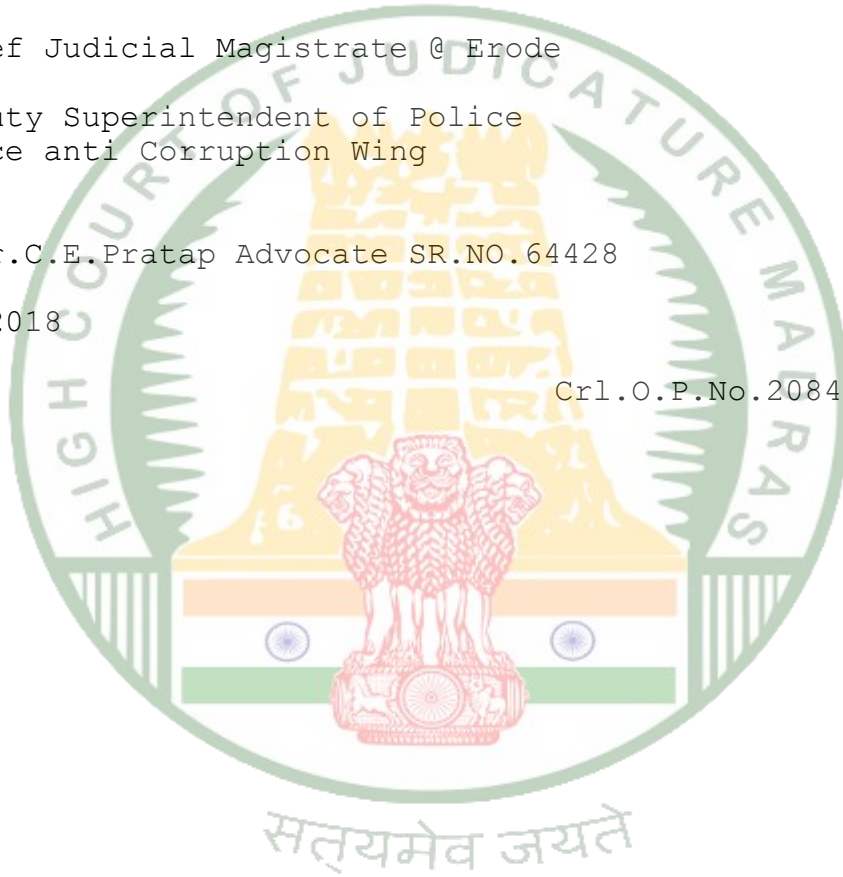
1.The Chief Judicial Magistrate @ Erode

2.The Deputy Superintendent of Police
Vigilance anti Corruption Wing
Erode

+1cc to Mr.C.E.Pratap Advocate SR.NO.64428

usm:27.9.2018

Cr1.O.P.No.20849 of 2018



WEB COPY