

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2018

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.23330 of 2018

&

Crl.M.P.Nos.13037 and 13039 of 2018

S.Nagarajan

..Petitioner

/Vs/

State, represented by
The Inspector of Police,
Vigilance & Anti-Corruption,
Coimbatore Detachment,
Coimbatore.

..Respondent/Complainant

PRAYER: Criminal Original Petition filed under section 482 of Cr.P.C. to set aside the orders of the learned Special Judge, dated 12.09.2018 in C.M.P.No.372 of 2018 in Spl.C.C.No.5 of 2011 on the file of the Special Court for cases under the Prevention of Corruption Act, Coimbatore.

For Petitioner : Mr.A.Thiyagarajan

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

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O R D E R

The Criminal Original Petition has been filed by the petitioner challenging the order passed by the learned Special Judge for cases of Prevention of Corruption Act, Coimbatore in Crl.M.P.No.372 of 2018, dated 12.09.2018, permitting the prosecution to examine additional witnesses.

2. The petition had been filed by the prosecution to examine one Tmt.V.Revathy and P.Yogalakshmi, who had accompanied the police party and signed as witnesses in house search (list), which has been marked as Ex.P.7 as additional witnesses.

3. Mr.A.Thiyagarajan, the learned counsel appearing for the petitioner would submit that though the additional witnesses have been called to speak about Ex.P.7, already P.W.2 and P.W.11 have been examined with regard to Ex.P.7 and that much belatedly, as an after thought, to fill up the lacunae, the petition had been filed by the

respondent/prosecution to examine the additional witnesses. He would further submit that the learned Special Judge for cases of Prevention of Corruption Act, Coimbatore, committed a grave error in allowing the petition at a much belated stage without considering the relevance of examining them. Further the learned counsel for the petitioner would submit that though the additional witnesses have signed as witnesses in the Ex.P.7, they have not been cited as list witnesses in the charge sheet and further the respondent have not come up with convincing reason for examining them as additional witnesses. He would further submit that the learned Special Judge for cases of Prevention of Corruption Act, Coimbatore, had deviated from the provisions of code of Criminal Procedure, which would have serious impact in the case of the defence, which is detrimental and prejudice to the interest of the petitioner. He would further submit that the respondent had neither examined the proposed witnesses during the investigation nor had recorded their statements under Section 161 (3) of Cr.P.C, and thereby there would be no relevance in calling them again and examining them as additional witnesses. Further the P.W.2 was examined on 07.05.2012 and Ex.P.6 and Ex.P.7 have been marked through him and the petitioner had also cross examined P.W.2 with regard to Ex.P.7 and thereafter P.W.11 Karunakaran, the Investigating Officer has also deposed on 06.12.2017 about Ex.P.6 and Ex.P.7 and he has also been cross examined by the petitioner. While so, the conduct of the respondent to examine additional witnesses at this stage can nothing but to fill up the lacunae, which will be against the concept of fair trial. He would further submit that the additional witnesses sought to be called for, are only attestors in the Ex.P.6 and Ex.P.7 and examining them may not be for either for finding truth or to arrive at a just decision of the case and he would submit that neither P.W.2 nor P.W.11 have deposed about the presence of the additional witnesses during the house search of the petitioner. He also would further submit that grave prejudice had been caused to the petitioner by allowing the petition to examine additional witnesses and would pray for setting aside the order passed by the learned Special Judge for cases of Prevention of Corruption Act, Coimbatore in C.M.P.No.372 of 2018 in Spl.C.C.No.5 of 2011 dated 12.09.2018.

4. The learned Additional Public Prosecutor appearing for the respondent would submit that pursuant to the order passed by the learned Special Judge for cases of Prevention of Corruption Act, Coimbatore, one of the additional witnesses namely Revathy has been examined in chief and would submit that the prayer in the petition in respect of witness Revathy has become infructuous. Further the additional witnesses, who are proposed to be examined are not strangers and that they are persons connected with this case and they have accompanied with other witnesses during the house search of the petitioner/accused and that they have attested in the list of documents drawn at the time of house search of the

petitioner/accused. He would further submit that their examination is necessary for arriving at a just decision in the case and the learned Special Judge for cases of Prevention of Corruption Act, Coimbatore, had rightly allowed the petition to examine additional witnesses. He would further submit that the scope of Section 311 Cr.P.C is very wide and that since, the additional witnesses have signed as attesting witnesses, their evidence appears to be essential to arrive at a just decision of this case and the learned Special Judge for cases of Prevention of Corruption Act, Coimbatore, has rightly allowed the petition.

5. It is apposite to refer the Section 311 of Cr.P.C.,
"311. Power to summon material witness, or examine person present.-

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

In the present case the persons sought to be examined as additional witnesses are not strangers, they are woman constables, who have accompanied with other witnesses during the search and they have also attested the list of documents, which has been marked as Ex.P.6 and Ex.P.7 and this Court is of the opinion, their evidence is necessary to corroborate P.W.2 and P.W.11 to arrive at a just decision and that no prejudice will be caused to the petitioner/accused by examining the witnesses as additional witnesses.

7. At this juncture, the learned counsel for the petitioner would submit that the defence of the petitioner had been taken up in a particular manner, since, nothing had been stated about the presence of the additional witnesses either in the charge sheet or during the evidence in trial and that he would submit that when the prosecution is permitted to examine additional witnesses, the petitioner should also be given an opportunity to recall the witnesses, P.W.2 and P.W.11 who have spoken about Ex.P.6 and Ex.P.7 and cross examine them with regard to the search conducted on 16.09.2008. This Court finds some force and reasonableness in the submission made by the counsel for the petitioner and opines that opportunity should be given to cross examine P.W.2 and P.W.11 with regard to additional evidence let in by the prosecution.

8. In the result, this Court finds that there is no error in the order passed by the learned Special Judge for cases of Prevention of Corruption Act, Coimbatore, permitting for

examination of additional witnesses. In view of the same, Criminal Original Petition stands dismissed. However, taking into consideration the plea, that an opportunity should be given to the petitioner to cross examine the witnesses P.W.2 and P.W.11, with regard to examination of additional witnesses, this Court deems that an reasonable opportunity should be given for the petitioner/accused. The petitioner/accused in the event of filing a petition to recall the witnesses P.W.2 and P.W.11, the learned Special Judge for cases of Prevention of Corruption Act, Coimbatore, shall allow the same and on appearance of P.W.2 and P.W.11 before the learned Special Judge for cases of Prevention of Corruption Act, Coimbatore, the petitioner/accused shall cross examine them on the same day of their appearance without any delay, limiting his cross examination to the evidence let in by the additional witnesses alone.

9. With the above observation, the Criminal Original Petition stands dismissed. Consequently connected miscellaneous petitions are closed.
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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Special Judge, Special Court for cases under the Prevention of Corruption Act, Coimbatore.
2. The Public Prosecutor
High Court, Chennai-104.
3. The The Inspector of Police,
Vigilance & Anti-Corruption,
Coimbatore Detachment, Coimbatore.

+1cc to Mr.A.Thiyagarajan, Advocate S.R.No.68787

KR/31/10/18

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