

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2018

CORAM

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA
Crl.O.P.No.24741 of 2018
& Crl.M.P.No.13962 of 2018

Neelaganda Subramanian

... Petitioner

Vs.

State Rep. By
Deputy Superintendent of Police,
Vigilance & Anticorruption, Erode.
(Crime No.17/AC/2003/ER).

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.2663 of 2018 in Special C.C.No.7 of 2015 on the file of Chief Judicial Magistrate/Special Judge at Erode dated 04.09.2018.

For Petitioner : Mr.V.Regunathan

For Respondent : Mr.K.Prabakar,
Additional Public Prosecutor.

O R D E R

The Criminal Original Petition has been filed to set aside the order passed in Crl.M.P.No.2663 of 2018 in Special C.C.No.7 of 2015 on the file of Chief Judicial Magistrate/Special Judge at Erode dated 04.09.2018, dismissing the petition to recall the witness P.W.14.

2. Mr.V.Regunathan, learned counsel for the petitioner would submit that the petitioner is the sole accused, charged and facing trial for offences under Sections 7, 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 in Crime No.17/AC/2003/ER in Special C.C.No.7 of 2015 on the file of the learned Chief Judicial Magistrate/Special Judge, Erode. He would submit that certain important questions were left out to be put to the witness P.W.14,

who is the Trap Laying Officer, and those points are very important to prove the defense cases and that on 21.08.2018, the petitioner had filed a petition seeking to recall the witness P.W.14, under Section 311 of Cr.P.C.,. Whereas, the trial Court had wrongly dismissed the petition stating that the petition has been filed after a lapse of nearly two years.

3. He would further submit that in Prithvi Singh Vs. Randhir Singh and others reported in (2008) 17 SCC 654, the Hon'ble Apex Court had held that the power of Magistrate under Section 311 of Cr.P.C. is vide and that the Magistrate can recall the witnesses at any time for arriving at a just decision of the case.

4. Mr.K.Prabakar, learned Additional Public Prosecutor would submit that no reason has been stated by the petitioner/accused to recall the witness P.W.14 filed before the trial Court and it is just a vague petition, bereft of details and would further submit that the P.W.14 was examined in chief on 01.12.2011 and he had been cross examined on behalf of the petitioner/accused on 20.11.2015. Later on 21.08.2018, a petition has been filed by the petitioner/accused to recall the witness P.W.14, after four years and that P.W.14, came to be cross examined on 20.11.2015, and thereafter the case was posted for 313(1) (b) Cr.P.C. questioning and the petitioner had taken several adjournments and finally, the counsel for the petitioner/accused has examined two witnesses on the side of the defense respectively on 02.12.2016 and 28.04.2017 and thereafter, on 14.08.2018 written argument was submitted by the prosecution and the case was posted to 21.08.2018 for further submission of the petitioner/accused whereas he had instead of filing written submission he filed a petition to recall the witness P.W.14. He would submit that the petition had been filed only with the intention of protracting the trial and would submit that the trial Court had rightly dismissed the petition.

5. Heard both sides and gone through the records.

6. The P.W.14, who is the Trap Laying Officer had been examined in chief on 01.12.2011, later he had been cross examined on 20.11.2015 after a period of four years. Then P.W.15, the Officer who laid final report before the Court was cross examined by the petitioner/accused on 11.12.2015. Thereafter the case has been posted to 24.12.2015 for questioning under Section 313(1)(b) of Cr.P.C. However after considerable delay, the questioning had been completed only on 23.02.2016. Thereafter, at the request of the petitioner/accused, the case had been adjourned to

08.03.2016, for examination of defense witnesses. Further two witnesses were examined on behalf of the petitioner/accused respectively on 02.12.2016 and 28.04.2017. Thereafter, on 29.05.2018, the defense side evidence had been closed and the case was posted to 05.06.2018, for advancing arguments. After repeated adjournments, on 14.08.2018, written argument was submitted on behalf of the prosecution and at the request of the counsel for the petitioner/accused the case had been adjourned to 21.08.2018 for defense side arguments. On 21.08.2018, the petitioner had come forward with the petition to recall the witness P.W.14.

7. The learned trial Judge relying on the Judgments of Sanjeev Rao Vs. State of Andra Pradesh reported in AIR 2012 SC 2242, Vinod Kumar Vs. State of Punjab reported in (2015 (1) M.L.J. (Crl.) 288 SC) and Doongar Singh and others Vs. State of Rajasthan (unreported) by a well reasoned order had rightly dismissed the petition in Crl.M.P.No.2663 of 2018 on 04.09.2018.

8. No doubt the discretion granted to the trial Judge under Section 311 of Cr.P.C is wide, but the exercise of such discretion is subject to reasonableness and genuineness. In the case of State of Haryana Vs. Ram Mehar and others reported in (2016) 8 SCC 762, the Hon'ble Apex Court has held that the concept of fair trial cannot be limitlessly stretched to permit recall of witnesses endlessly on ground of magnanimity. Though several opportunities had been given to the petitioner/accused, he had not stated any specific reason for recalling the witness P.W.14. Further no ground has been made by the petitioner to recall P.W.14, much belatedly at the stage when the case was posted for filing of written submission. This Court is of the firm opinion that the petitioner has adopted a devious method only to protract the proceedings by filing this petition. There is no reason to interfere with the order passed by the trial Court in Crl.M.P.No.2663 of 2018 dated 04.09.2018.

9. Hence the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS vi)

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Sub Assistant Registrar

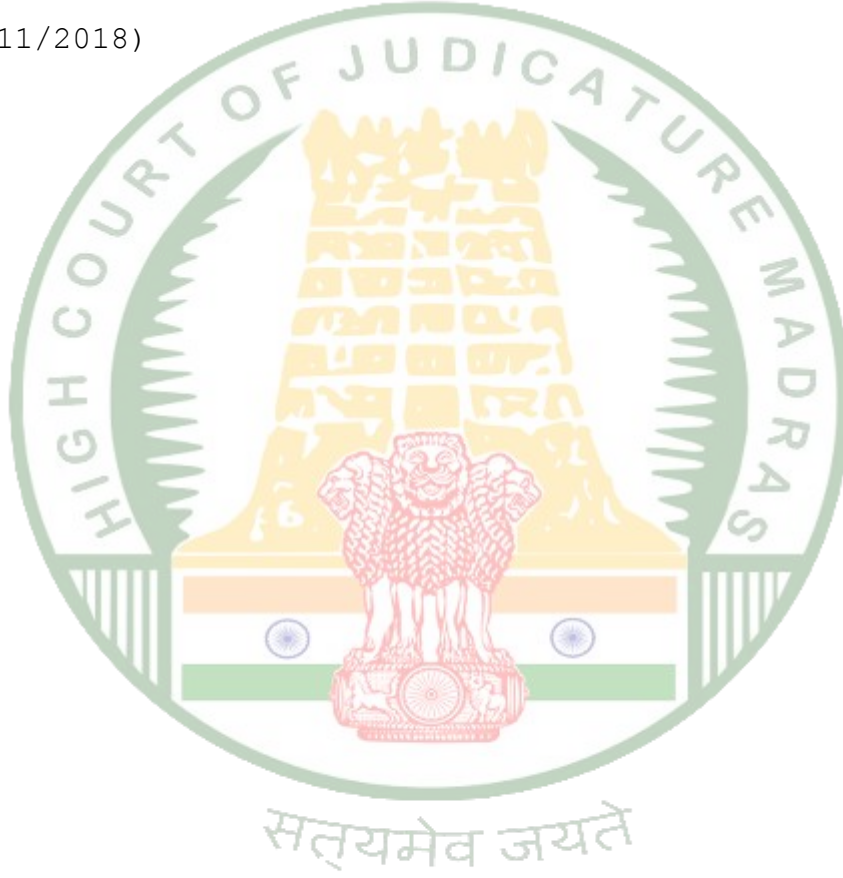
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To

1. The Chief Judicial Magistrate/Special Judge
Erode.
2. The Public Prosecutor,
Madras High Court.
3. The Deputy Superintendent of Police,
Vigilance & Anticorruption, Erode.

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& Crl.M.P.No.13962 of 2018

ASK(14/11/2018)



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