



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**

Crl.O.P. (MD)No.14461 of 2017

State by
Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli.

: Petitioner

Vs.

1.N.Periyasamy (Died)
2.Tmt.Ebenesarammal
3.Tr.N.P.Raja
4.Tr.N.P.Jegan
5.Tr.Jeevan Jacob Rajendran
6.Tmt.Geetha Jeevan

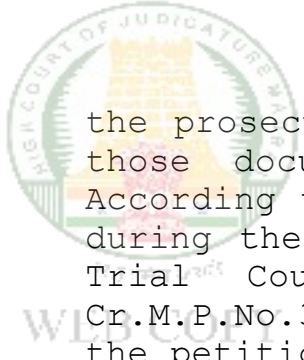
: Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records in Cr.M.P.No.363 of 2017 in Special Case No.2 of 2003 on the file of the learned Chief Judicial Magistrate -cum- Special Judge, Thoothukudi and to set aside the order passed in Crl.M.P.No.363 of 2017 in Spl.Case No.2 of 2003, dated 28.07.2017 and consequently, to pass an order to recall the witnesses.

For Petitioner : Mr.C.Mayil Vahana Rajendran,
Additional Public Prosecutor
For Respondents 2to6 : Mr.V.S.Venkatesh

ORDER

The Respondents/accused are facing trial in Special Case No.2 of 2003 before the learned Chief Judicial Magistrate -cum- Special Judge , Thoothukudi, for various offences under the Indian Penal Code and Prevention of Corruption Act. Admittedly, the prosecution have examined 218 witnesses so far and the Investigating Officer Mr.S.S.Manicka Rao, Deputy Superintendent of Police is in the witness stand and the chief-examination has not been completed. While so, the prosecution filed a petition in Cr.M.P.No.363 of 2017 in Special Case No.2 of 2003 under Section 311 of the Code of Criminal Procedure to recall 29 witnesses including P.W.39, P.W.114, P.W.135 and P.W.139 for marking certain documents which



the prosecution had failed to mark through those witnesses though those documents were available on the record of the Court. According to the prosecution, this lacuna was noticed by them only during the examination of the Investigating Officer. However, the Trial Court, by the impugned order dated 28.07.2017 in Cr.M.P.No.363 of 2017 in Special Case No.2 of 2003, has dismissed the petition, aggrieved by which, the State is before this Court.

2. Heard Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor for the petitioner and Mr.V.S.Venkatesh, learned counsel for the respondents 2 to 6/accused.

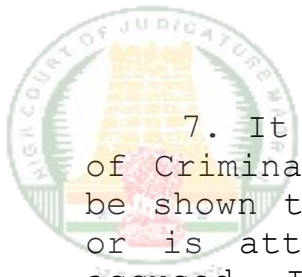
3. In the present petition before this Court, the prosecution has stated as follows:

"I respectfully submit that even though petition to recall 29 witnesses was filed before the trial court, recalling of at least 4 witnesses namely 1.Tr.E.Vijayakumar (PW-39), 2.Tr.Jeya Sundarapandian (PW-114), 3.Tr.P.Ponsekar (PW-135) and 4.Tr.W.Sebastian (PW-139) are necessary to mark the documents available before the trial court in the interest of justice and for the just decision of the case."

4. Mr.V.S.Venkatesh, learned counsel for the accused fairly conceded the position that a witness can be recalled at any time under Section 311 of the Code of Criminal Procedure before the Judgment is delivered, in view of the law laid down by the Supreme Court in **Rajaram Prasad Yadav vs. State of Bihar [2013 (3) Scale 316]**. His only grievance was that the accused are facing trial from the year 2003 and that Accused No.1 has died in the meantime, but, still, the case has not come to an end so far. He further contended that the examination in chief of the Investigating Officer began on 03.07.2015 and after recording his evidence in part, he was once again summoned on 28.03.2016 and part of his evidence was recorded and thereafter, he had not appeared before the Trial Court throughout 2017, but, whereas, the accused and the counsel have been attending the Court regularly.

5. In response to this submission, Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor submitted that the prosecution was forced to discontinue the examination of the Investigating Officer, since the prosecution observed that some important documents were not marked and, therefore, it became necessary for them to file an application under Section 311 of the Code of Criminal Procedure.

6. This Court gave its anxious consideration to the rival submissions.



7. It is a trite that the power under Section 311 of the Code of Criminal Procedure can be invoked at any time, but, it should be shown that the prosecution is not trying to fill up any lacuna or is attempting to cause undue prejudice to the case of the accused. In this case, the documents in question are already in the file of the Court and because of the complex nature of the case, they were not marked through the relevant witnesses. The prosecution has now confined themselves to recall only four witnesses and this Court is of the view that it will serve the interest of justice, if the limited prayer of the prosecution is allowed.

8. Accordingly, the prosecution is permitted to recall Vijayakumar (PW-39), Jeya Sundarapandian (PW-114), Ponsekar (PW-135) and Sebastian (PW-139) and examine them. The accused will be entitled to cross-examine the witnesses. The Investigating Officer shall also get into the witness box and complete his examination in chief and cross. Three months time is given from 01.03.2018 to complete the trial. The Trial Court shall first recall and examine Vijayakumar (PW-39), Jeya Sundarapandian (PW-114), Ponsekar (PW-135) and Sebastian (PW-139) and thereafter, continue with the examination of the Investigating Officer, so that, the accused would get their right to confront the contradictions under Section 162 of the Code of Criminal Procedure.

9. This Criminal Original Petition is disposed of with the above direction.

Sd/-

Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate -cum-
Special Judge, Thoothukudi.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.V.S.Venkatesh, Advocate Sr.No.44921

SML

VB/SV/MMS/SAR4/14.02.2018/3P/4C

Order made in
Crl.O.P. (MD) No.14461 of 2017
30.01.2018