



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.07.2018

Pronounced on : 19.07.2018

CORAM:

THE HONOURABLE Mrs. JUSTICE R. THARANI

Crl.O.P.(MD)No.10659 of 2018

and

Crl. M.P.(MD)No.4778 of 2018

S.Victor

... Petitioner/Accused

Vs.

State rep. By

The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Unit,
Kanyakumari Detachment,
Nagercoil.

... Respondent/Complainant

PRAYER : The petition filed under Section 482 Cr.P.C. to set aside the order of the learned Special Judge cum Chief Judicial Magistrate, Kanyakumari District made in Crl.M.P.No.313 of 2018 dated 13.06.2018 of allowing the application of the respondent herein for examining one Arunkumar and one Mathialagan as additional witness in Special Case No.5 of 2015 on the file of the Chief Judicial Magistrate - cum - Special Judge, Kanyakumari District at Nagercoil.

For Petitioner : Mr.S.Palani Velayutham

For Respondent : Mr.M.Chandrasekaran,
Additional Public Prosecutor

ORDER

Heard Mr.S.Palani Velayutham, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondent.

2.This Original Petition has been filed to set aside the order of the learned Special Judge cum Chief Judicial Magistrate, Kanyakumari District made in Crl.M.P.No.313 of 2018 dated 13.06.2018 of allowing the application of the respondent herein for examining one Arunkumar and one Mathialagan as additional witness in Special Case No.5 of 2015 on the file of the Chief Judicial Magistrate - cum - Special Judge, Kanyakumari District at Nagercoil.

3.The case of the prosecution is that the occurrence is alleged to have been taken place between the period from 11.03.2009 to 09.02.2012. The petitioner was an Assistant Engineer (Agricultural Engineering) who was a public servant has misused his official capacity by forging the signature of one S.Vellian, Assistant Executive Engineer (Agricultural Engineering), who is his superior, and who has the authority to open an account. The accused himself has put the official seal dated 01.02.2009 and opened a SB account No.24420100007113 at the Bank of Baroda at



Nagercoil on 19.02.2009 in the name of the Assistant Engineer with a malafide intention of cheating through falsification of accounts by corrupt practices to misappropriate the Government money in the form of contribution amount for the works done by the Water Shed Committee cum Water Shed Association formed in the Agricultural Engineering konam.

4. In the same course of transaction by deceitful methods of cheating, the petitioner falsely prepared Measurement Books and prepared false bills and swindled the bill amount, misappropriated the farmers for a sum of Rs.13,79,999/- (Rupees Thirteen Lakhs Seventy Nine Thousand Nine Hundred and Ninty Nine only) and committed an offence of forgery, falsification of records, knowingly used the forged documents as genuine, forging the seal and signature and done criminal misappropriation and thereby criminal misconduct.

5. On the side of the petitioner, it is stated that in this case, so far 23 witnesses were examined. Earlier, this Court has fixed a date for disposal of the case but the case is still pending. The time fixed also expired and in between the prosecution has filed a petition to implead additional witnesses.

6. On the side of the petitioner, it is stated that nine years has passed away and the occurrence is of the year 2009 and impleading two more witnesses will drag on the proceedings and impleading two more witnesses at this stage is illegal.

7. On the side of the petitioner, the learned counsel relied on a judgment passed by this Court in the case of State through Inspector of Police, CBI/ACB, Chennai v. S.Sankaran and another reported in 2005 M.L.J., (Crl.) 204, which reads as follows:

"Application by prosecution to examine additional witnesses at the fag end of trial after 10 years - No reasons given for not examining them earlier - Held, rightly rejected by the trial Court."

8. On the side of the prosecution, It is stated that one of the witness Regupathi, who is L.W.9 was abroad, and could not be examined as he is not in India. The prosecution had to examine two more witnesses who are Officials worked at that period and that the petition for examination of additional witness was allowed by this Court. The petitioner forged the signature of the Assistant Executive Engineer and by putting his official seal misappropriated a deposit of Rs.13,79,999/- (Rupees Thirteen Lakhs Seventy Nine Thousand Nine Hundred and Ninety Nine only) by opening an account in the Bank of Baroda. L.W.9 one Regupathi, who was the then Manager of the Bank of Baroda is now working in Ukanda, and he cannot be examined at this stage. On the side of the respondent, it is stated that the only reason for the delay is the non availability of the witnesses. To avoid the delay, the prosecution has come forward to examine two additional witnesses/Officials who worked in the Bank at



that time. There evidence will be based only on the records and the allegations of misappropriation is grave in nature and impleading of additional witnesses is vital for the prosecution to prove the case. Without examination of these two witnesses, the offence cannot be proved and prayed that the petition has to be dismissed.

9. Records perused. The case against the petitioner is misappropriation of funds by creating documents in the name of the Assistant Executive Engineer. It is true that there is an order fixing up the time for disposal in CrI.O.P.(MD)No.2955 of 2017 dated 04.12.2017. In this case, the prosecution has not completed the examination of witnesses. It is stated that L.W.9 is not in India. On the side of the respondent, it is stated that two more witnesses who worked in the particular Bank at the particular time have to be examined.

10. The case is based on the records. The newly impleaded witnesses can give evidence only with regard to the records available in the Bank. No prejudice would be caused to the petitioner. The reasons given by the prosecution is satisfactory. The reasons for non-examination of L.W.9 is satisfactory. The petition under Section 311 Cr.P.C., was not filed at the fag-end of the case. The petition was filed before the completion of the prosecution evidence and the Judgment cited by the petitioner is not applicable to this case. The application of prosecution is to be accepted. This Court does not see any infirmity in the order of the lower Court.

11. With the above observation, this Criminal Original Petition is dismissed. Consequently, CrI.M.P.(MD)No.4778 of 2018 is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Unit,
Kanyakumari, Nagercoil.
2. The Chief Judicial Magistrate - cum - Special Judge,
Nagercoil, Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.S.Palani Velayutham, Advocate SR.No. 73974

CrI.O.P.(MD)No.10659 of 2018
19.07.2018