

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

CORAM

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

Crl.O.P.No.8599 of 2019
& Crl.MP.No.4583 of 2019

S.Dheenadhayalan

... Petitioner/Petitioner/Accused

Vs

State of Tamil Nadu rep by
Inspector of Police
Vigilance and Anti-Corruption
Cuddalore.

.... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C to set aside the order dated 15.03.2019 passed in Crl.MP.No.130/2019 in Spl. Case No.24 of 2011 on the file of the learned Chief Judicial Magistrate/Special Judge, Cuddalore.

For Petitioner : Mr.V.Krishnamoorthy

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

O R D E R

The Criminal Original Petition has been filed, seeking to set aside the order passed by the learned Chief Judicial Magistrate/Special Judge, Cuddalore, in Crl.MP.No.130 of 2019 in Spl.Case No.24 of 2011 dated 15.03.2019, dismissing the petition filed under Section 243 (i) Cr.P.C., to permit the petitioner to examine 7 witnesses on his side.

2.The case of the prosecution is that the petitioner/accused was working as Foreman Grade-I, in the office of Junior Engineer, TNEB, Rural (West), Pathirikuppam, Cuddalore District, from 23.03.2007 to 29.12.2010 and he is a public servant as per Section 2(c) of the Prevention of Corruption Act, 1988.

3.On 18.12.2010, the petitioner/accused had demanded Rs.1,000/- as illegal gratification from the complainant-

Thiru.N.Loganathan, and that on 28.12.2010 at 09.00 hours, the said complainant met the petitioner/accused to requested to reduce the bribe amount and the petitioner reduced and demanded the bribe amount of Rs.800/- from the complainant and also he directed the complainant to bring the said bribe amount of Rs.800/- on the next day, for himself, as gratification other than legal remuneration as a motive or reward for doing his official act. Pursuant to the demand a trap was laid on 29.12.2010 and the petitioner/accused was caught while accepting the bribe and was arrested and after completion of investigation, the respondent police had filed the final report against the petitioner for the offences punishable under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

4.The Special Case had been taken on file on 01.12.2011 and trial had commenced on 06.02.2013 and P.W.1 to 14 were examined and Ex.P.1 to 25 were marked and the evidence on the side of the prosecution was closed on 08.11.2018. The petitioner/accused was questioned under Section 313 (1) (b) Cr.P.C., on 15.11.2018 and thereafter, the case had been adjourned to 29.11.2018, 20.12.2018, 10.01.2019 and 22.01.2019 for defence side evidence and since no witness was produced, the trial Court had attempted to close the evidence of the petitioner/accused. At that stage, the petitioner had filed an application for adjournment in CrI.MP.No.33 of 2019, seeking one month time to furnish list of witnesses, which was dismissed as infructuous on 04.03.2019 and thereafter giving sufficient opportunities on 24.01.2019, 07.02.2019 and 04.03.2019, the case had been adjourned to 05.03.2019 and at that stage, the present application had been filed under Section 243 (i) Cr.P.C., seeking to permit the petitioner to examine 7 witnesses of the side of the defence.

5.Though no counter had been filed and no objection had been made by the respondent police, the learned Trial Judge had dismissed the application stating that the petitioner had been given sufficient opportunities from 29.11.2018 to 08.03.2019 and that he has not utilized the opportunities and that finding no suggestions were put to the prosecution witnesses with regard to the reason for which the defence witnesses were sought to be examined and further finding that the application has been filed for the purpose of vexation or delay or for defeating the ends of justice had dismissed the petition filed under Section 243 (i) Cr.P.C.

6.The learned counsel for the petitioner would submit that under Chapter XIX of the Cr.P.C., under Section 243 Cr.P.C an indefeasible right has given to the accused to let in evidence on the side of the defence. He would submit that as per Section 20 of the Prevention of Corruption Act, presumption is cast

against the petitioner and the petitioner has a bounden duty to rebut the presumption by letting evidence on his side. He would further submit that the witnesses sought to be recalled are for specific purpose of defending the case and that he would submit that the application has been made specifying the reason and need for summoning the witnesses on the side of the defence. He would also submit that though the petitioner had been filed seeking to summon seven witnesses, the petitioner is now prepared to restrict his claim in respect of summoning to (1) Thiru.T.Seshadri S/o Dhandapani, to speak about the happenings at the time of trap, (2) Thiru.Kannan S/o Sitaram, to speak about using their own vehicles for transporting the electric pole to give service connection and (3) Thiru.Chandramouli, Assistant Administrative Officer, O/o Superintending Engineer, TNEB, Capel Hills, Cuddalore, to speak about the irregularity in the sanction accorded to P.W.1. He would submit that the petitioner would be able to demonstrate his case of defence by examining these witnesses and their examination is very much essential for disproving the case of the prosecution. He would further submit that the petitioner had obtained certain documents from the TANGEDCO, under the RTI Act, wherein it had been stated that P.W.1 was appointed as Superintending Engineer on Additional Charge, whereas no proceedings with regard to the same is available in the office records and thereby examination of Thiru.Chandramouli, Assistant Administrative Officer, O/o Superintending Engineer, TNEB, Capel Hills, Cuddalore, is essential with regard to irregularity in the sanction. Further, though P.W.2 has turned hostile, he has been cross examined on behalf of the petitioner and PW.2 had stated that the amount given by him was towards engaging a private vehicle for transporting the electric poles and thereby Thiru.Kannan S/o Sitaram, a Private Contractor has to be examined. Further in respect of the happenings of the office of the Junior Engineer, TNEB, Rural (West), Pathirikuppam, Cuddalore District, on the particular day, Thiru.T.Seshadri S/o Dhandapani, an employee in the Board has to be examined.

7.The learned counsel for the petitioner would submit that though there had been certain lapses on the side of the petitioner, the learned trial Judge had erred in dismissing the application stating that the defence witnesses are not necessary and that the petitioner having not elicited by suggestion about the presence of the witnesses sought to be examined regarding the trap proceedings and the other witnesses regarding the use of their own vehicles for transporting the Poles. He would once again reiterate that the respondent police had not objected to examining the witnesses on the side of the defence. He would further submit that though he had called for 7 witnesses, he is restricting his claim to call the witnesses 1, 4 and 5 cited in CrI.M.P.No.130 of 2019, before the trial Court. He would also

given an undertaking that if a time frame is fixed, he will examine them on the same day of their appearance before the trial Court without any further delay.

8. The learned Additional Public Prosecutor would submit that as per proviso to Section 243 Cr.P.C., the trial Judge had rightly gone through the evidence and being satisfied that summoning of the witnesses on the side of the defence is not necessary had dismissed the application. Further, the learned Trial Judge had also taken note of the delay.

9. Heard the submissions made by the learned counsel on either side. I have consciously gone through the order passed by the learned trial Judge in CrI.MP.No.130 of 2019 in Spl.Case No.24 of 2011.

It is apposite to refer to Section 243 of Cr.P.C., Section 243 of Cr.P.C reads as follows:-

" Evidence for defence. (1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court."

10. Section 243 (2) Cr.P.C., states that the application under Section 243 can be refused on the ground if it is made for

the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing. The learned Trial Judge, finding that despite several opportunities granted to the petitioner, the petition had been filed belatedly, had dismissed the application, stating that the petition has been filed for the purpose of vexation or delay or for defeating the ends of justice. Moreover, he has recorded the reasons for such refusal.

11. I do not find any infirmity in the reasoning given by the learned Trial Judge. The learned Trial Judge had dismissed the petition stating reasons as per the mandate of Section 243 (2) of Cr.P.C. However, here is a case where the petitioner is charged for offences under Sections 7 and 13(2) 13 (1) (d) of the Prevention of Corruption Act, 1988 and there is a presumption cast on the petitioner/accused, under Section 20 of the Prevention of Corruption Act, 1988 to rebut the presumption against him.

12. This Court is of the opinion that though there had been serious lapse on the part of the petitioner/accused, yet refusal to summon the witnesses on the side of the defence to rebut the presumption would amount to denial of fair trial resulting in grave prejudice to the petitioner. Further, the petitioner/accused has also now restricted his claim, seeking to summon the witnesses viz., 1, 4 and 5 stated in the list filed along with the CrI.M.P.No.130 of 2019 and this Court is also convinced with the reasons for which the witnesses are sought to be summoned on the side of the defence. Therefore, in the expedient interest of justice and fair trial, the learned Trial Judge shall permit the petitioner/accused to summon the witnesses 1, 4 and 5 stated in the CrI.M.P.No.130 of 2019 and the exercise of summoning and examination of the said witnesses on the side of the defence shall be completed within a period of three weeks from the date of the next hearing and thereafter, after completion of arguments by the prosecution, the petitioner/accused shall complete the arguments within 3 days thereafter. The learned Trial Judge shall ensure that the Trial is completed at the earliest preferably before 31.05.2019.

13. With the above directions, the Criminal Original petition stands disposed of. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

kv/Jer

To

1.The Chief Judicial Magistrate/Special Judge, Cuddalore.

2.- do - The Chief Judicial Magistrate, Cuddalore.

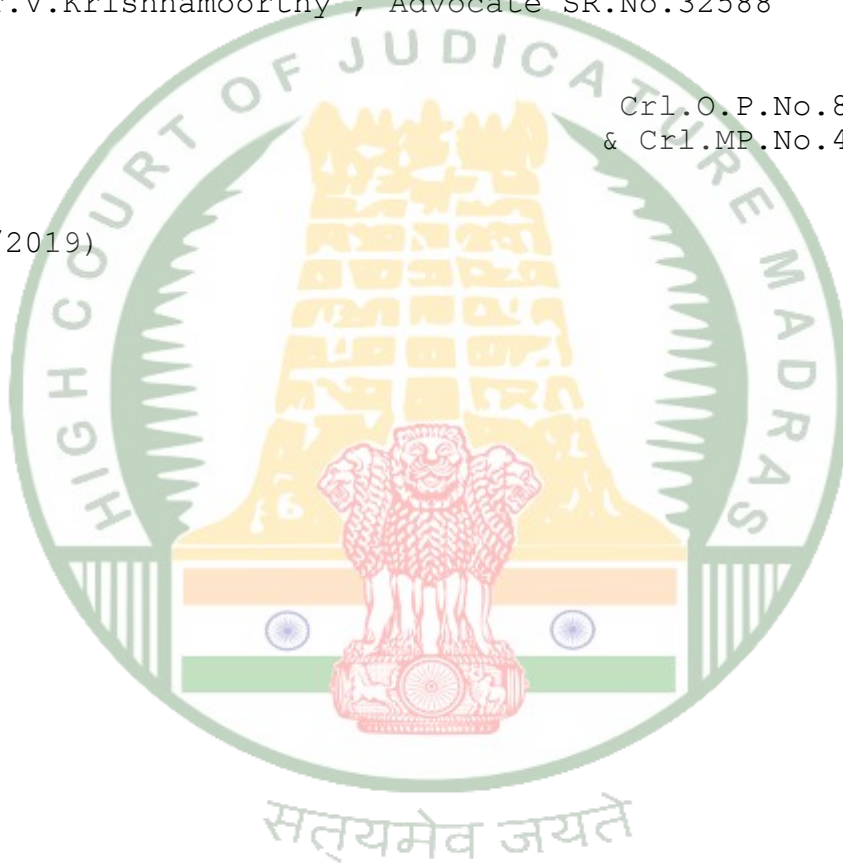
3.The Inspector of Police, Vigilance and Anti-Corruption
Cuddalore.

Copy To : The Public Prosecutor, High Court, Madras

+1cc to Mr.V.Krishnamoorthy , Advocate SR.No.32588

Crl.O.P.No.8599 of 2019
& Crl.MP.No.4583 of 2019

VGI (CO)
GMY (08/04/2019)



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