

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 28.08.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P.No.22709 of 2019

and

CrI.M.P.No.11812 of 2019

Parasmal H. Jain

Petitioner/A-2

Vs

The State represented by
The Inspector of Police,
Vigilance and Anti-Corruption,
Special Investigating Cell,
Chennai-600 028.

... Respondent

Prayer:- This Petition filed under section 482 Cr.P.C., to set aside the dismissal order dated 04.07.2019 in CrI.M.P.No.576 of 2019 in C.C.No.6 of 2016 on the file of the Special Court for cases under Prevention of Corruption Act, Chennai and permit the petitioner/A-2 to cross examine the P.W.2 in the above case in C.C.No.6 of 2016.

For Petitioner : Mr.G.Sivasuriya

For Respondent : Mr.K.Prabakar, APP

ORDER

The above Criminal Original Petition has been filed, seeking to set aside the order dated 04.07.2019 in CrI.M.P.No.576 of 2019 in C.C.No.6 of 216, by the learned Special Judge, Special Court for cases under the Prevention of Corruption Act, Chennai, dismissing the petition filed under Section 311 Cr.P.C., to recall P.W.2.

2 Heard both sides.

3 The brief facts of the case is that the petitioner is accused as A-2 in C.C.No.6 of 2016, pending trial on the file of the Special Court for cases under the Prevention of Corruption Act, Chennai. The petitioner had filed a petition u/s. 311 Cr.P.C., to recall P.W.2 for further cross examination. The Trial Court had dismissed the petition on 04.07.2019. Against

the order of dismissal the present petition is filed. In the petition filed u/s.311 Cr.P.C., it had been stated that during the course of trial, PW.2 had filed a petition u/s.284 Cr.P.C., before the Trial Court, seeking for examining her by appointing an Advocate Commissioner, and the same was dismissed by the Trial Court. Against the order of dismissal, P.W.2 filed a revision before this Court.

4 During the pendency of the revision, the respondent had been informed that the evidence of P.W.2, has to be completed within a day when she appears before this Court and in compliance of the order, P.W.2 had appeared before the Court; however, the learned counsel for the petitioner was unable to elaborately cross examine P.W.2 since, there was no proper information to him. The petitioner had prepared lot of questions with regard to the above case, but due to wrong information given with regard to recording evidence of P.W.2, the petitioner's counsel had sought time for cross examination of P.Ws.1 and 2 on some other day. However, since the Trial Court rejected his plea and insisted to cross examine on the same day. The petitioner was pressed to cross examine P.W.2 shortly itself as no time was granted for cross examination. Due to urgency and not giving sufficient time, the petitioner could not effectively cross examine the witness hence, the petition had been filed seeking to recall P.W.2 for further cross examination.

5 The respondent had filed a counter stating that the case was posted for trial for cross examination of L.W.3/Thiyagarajan and at that stage, the defence had filed an application u/s.311 Cr.P.C., for recalling of P.W.2/Vijayalakshmi. It had been further stated that this Court by order dated 04.07.2019 directed the respondent to inform the defence counsels through the Trial Judge to cross examine witness P.W.2 on the same day on her appearance before the Court. However, after examination of P.W.2 on 15.02.2019, the case was adjourned for cross examination on 25.02.2019 on that such day, the learned counsel for the petitioner had elaborately cross examined P.W.2 and since the cross examination has been elaborately done, there is no merit in the petition. It had been further stated that the Trial Court taking note of the direction given by this Court, had dismissed the petition seeking to recall P.W.2. Against which the present revision petition has been filed.

6 The learned counsel for the petitioner would submit that the petitioner was not properly informed about the direction of this Court and thereby, the petitioner was unable to elaborately cross examine P.W.2 on the particular day.

7 The learned Additional Public Prosecutor would submit that P.W.2 had filed an application u/s. 284 Cr.P.C., for

examination of witness by appointing an Advocate Commissioner and that during the pendency of the revision this Court had directed the respondents to inform the learned Trial Judge to intimate the learned counsel for the defence to fix the date for cross examination of witness. During the pendency of revision on 17.02.2019, this Court had passed the following order:-

"the learned Additional Public Prosecutor is directed to inform the learned Trial Judge, about the request made by the petitioner, so that the counsel for the accused may be put on notice about the date on which the petitioner shall be asked to appear before the Court and that they may be directed to cross examine the petitioner/witness on the same day of her appearance before the Court."

8 He would further submit that after putting the accused and their counsels on notice the witness was examined in chief on 15.02.2019 and that though this Court had directed the accused to cross examine the witness on the same day, the Trial Court was benevolent enough to grant one more day for cross examination and thereby, the case was posted for cross examination of P.W.2 on 25.02.2019. On the said date, the counsel for the petitioner has elaborately cross examined the witness and at that time, no objection has been raised by the learned counsel for the petitioner as if the petitioner was curtailed from effectively cross examining the witness and that the petitioner was thereby prejudiced or put to any difficulty. However, after the said witness had been examined in full and now taking advantage of the health condition of P.W.2 only with an intention to delay and protract, the present petition has been filed after 40 days and would submit that the very intention of the petitioner is only to delay the progress of trial. He would rely on the judgment of the Hon'ble Apex Court in Vinodh Kumar V. State of Punjab reported in (2015) 3 SC 220 and would submit that the Honb'le Apex Court had held that it is imperative that if examination in chief is over the cross examination should be completed on the same day and in this case, the chief was conducted on 15.02.2019 and after giving sufficient opportunity, the case was posted to 25.02.2019, for cross examination despite the orders of this Court and thereby he would submit that there is no infirmity in the order passed by the Trial Court and would submit that sufficient opportunity has been given to the petitioner, despite the order passed by this Court, directing to cross examine the witness.

9 I have gone through the records. During the pendency of the revision petition filed by P.W.2, seeking to examine her through an Advocate Commissioner, this Court had directed the learned Additional Public Prosecutor to inform the Trial Judge about the request made by P.W.2 so that the learned counsel for

the accused may be put on notice about the date on which the petitioner shall be asked to appear before the Court and that they may be directed to cross examine the petitioner/witness on the same day of her appearance before the Court. In compliance of the order, P.W.2 had appear before the Court on 15.02.2019 and though there was a direction from the Court directing the learned counsel to cross examine her on the same day of appearance, the learned Judge, had benevolently adjourned the case to 25.02.2019, by giving opportunity to the petitioner for cross examining the witness P.W.2. Thereby the contention of the learned counsel for the petitioner that the defence was constrained to cross examine on the same day without sufficient time being given cannot be accepted. The Trial Court after examination of P.W.2 in chief on 15.02.2019 had adjourned the matter to 25.02.2019. Further it is also stated by the learned Additional Public Prosecutor that the petitioner has elaborately cross examined the witness on the day and that the petition is filed to protract the trial taking advantage of the health condition of the witness. The Hon'ble Apex Court in Vinodh Kumar V. State of Punjab reported in (2015) 3 SC 220 held that it is not at all appreciable to call a witness for cross examination after such a long span of time. It is imperative if the examination in chief is over, the cross examination should be completed on the same day. However, in this case, the Trial Court despite the chief being taken on 15.02.2019 and despite the directions of this Court to complete the cross examination on the same day had granted an opportunity to the petitioner/accused to cross examine on 25.02.2019. It is also seen that the petitioner has elaborately cross examined the witness on 25.02.2019 and further, no objection has been made by him on 25.02.2019 that he was not given an opportunity to elaborately cross examine P.W.2. Strangely after 40 days viz., from 25.02.2019 to 01.04.2019, the above petition has been filed to recall P.W.2. Taking into consideration, the orders passed by this Court and finding no merits in the petition the trial Court had dismissed the petition to recall the witness. This Court is also of the opinion that this petition to recall the witness has been filed to protract the progress in trial. This Court does not find any infirmity in the order passed by the Trial Court. The trial Court has rightly dismissed the petition.

10 In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (DR CJ conf)

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Sub Assistant Registrar

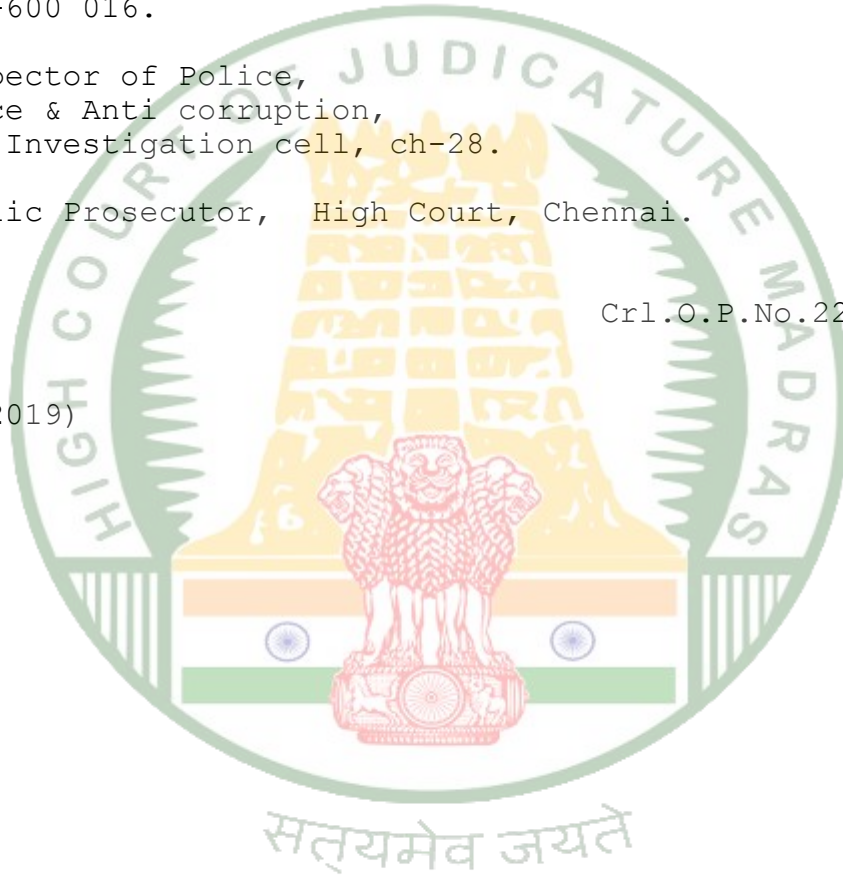
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To:

- 1.The Special Judge, for cases
under Prevention of Corruption Act,
Chennai.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai City-IV Detachment,
Chennai-600 016.
- 3.The Inspector of Police,
Vigilance & Anti corruption,
Special Investigation cell, ch-28.
- 4.The Public Prosecutor, High Court, Chennai.

Crl.O.P.No.22709 of 2019

BS (CO)
CB(10/10/2019)



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