

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.09.2019

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.24481 of 2019 &
Cr1.M.P.No.12962 of 2019

S. Ganesan

.. Petitioner/Accused

Vs

The State, represented by
the Inspector of Police,
Chennai City IV,
Vigilance and Anti Corruption,
(Crime No.9/AC/2009/CC-V)
Chennai

.. Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of
Cr.P.C., to set aside the order passed by the learned Chief
Judicial Magistrate, Thiruvallur on 06.08.2019 in Special Case
No.20 of 2011.

For Petitioner : Mr.V.Paarthiban

For Respondent : M/s.M. Prabhavathy,
Addl. Public Prosecutor.

ORDER

This petition is filed seeking for a direction to set aside
the order passed by the Special Judge/Chief Judicial Magistrate
at Tiruvallur in Special Case No.20 of 2011, dated 06.08.019.

2. The petitioner is an accused in Special Case No.20 of
2011 on the file of the Special Judge/Chief Judicial Magistrate,
Tiruvallur for the offence under Section 13 (1)(d) of Prevention
of Corruption Act.

3. It is seen that before the trial Court, the prosecution
side had completed its evidence and questioned the accused under
section 313 Cr.P.C. Thereafter, the petitioner had filed
petition in Cr1.M.P.No.4576 of 2019 under section 311 of Cr.P.C.,
to reopen the case in Spl.Case No.20 of 2011 in order to
examine five persons as defence side witnesses

1. M.V. Mohan

2. P.V.Kuppaiyan

3. Chinnasamy
4. Venkatesan
5. E. Raja

4. The trial Court, by its order dated 24.7.2019, allowed the petition on condition that the petitioner to examine the defence side witnesses on the next hearing without fail and posted the case on 6.8.2019.

5. On 6.8.2019, the petitioner was not able to produce the defence side witnesses for the reason that all the five defence witnesses cited by him are all official witnesses, out of which, three of them were retired. Further, they were insisting that unless they receive summons from the Court, it would not be appropriate for them to appear before the court and give evidence for this reason the petitioner could not produce defence witnesses on 6.8.2019. The petitioner expressed his inability to produce defence witnesses before the trial court. The trial Court closed the defence side evidence holding that the directions given by it are not complied with and the case has been long pending from the year 2011 and posted the case for arguments on 13.8.2019. Thereafter the case is posted to 16.09.2019. Aggrieved against the order passed by the trial court, the present Criminal Original Petition is filed.

6. Learned counsel for the petitioner would submit that there is a statutory presumption against him under Section 20 of the Prevention of Corruption Act. To rebut the presumption, he needs to examine the defence witnesses to prove his case. He further submits that the trial Court on permitting the petitioner to examine defence witnesses, under Sub Section (2) of Section 243 Cr.P.C., the trial court to issue process for their appearance. It is his further submission that great prejudice would be caused to him if these witnesses are not examined and the petitioner will cooperate with the trial by examining the witnesses then and there whenever they appear or produced. He would further undertake that he shall complete the trial by examining the defence witnesses, whenever they appear, then and there, within a time stipulated by this Court.

7. The learned Additional Public Prosecutor submits that the defence side witnesses has to be examined within a short period and no further delay to be caused on the pretext of examining the defence witnesses.

8. Considering the submissions made on either side, the trial court is directed to issue summons to the above stated five persons for their appearance and to give evidence, as defence side witnesses on payment of necessary batta by the petitioner .

9. Further, the trial court is directed to fix the date of examination of defence side witnesses in all possibilities. The entire process of examining the defence witnesses shall be completed within a period of 10 days from the date of receipt of copy of this order and thereafter the arguments of the case should commence within 10 days therefrom.

10. The learned counsel for the petitioner on instructions submit that he will adhere to the above directions and would cooperate for completion of trial within the stipulated time.

11. With the above condition, the Criminal Original Petition is allowed. Consequently, connected CrI.M.P.No.12962 of 2019 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate,
Thiruvallur.

2.The Inspector of Police,
Chennai City IV,
Vigilance and Anti Corruption,
Chennai

+1 cc to M/s.V.Paarthiban, Advocate Sr.No. 77973

AKM/26.09.19/3P-4C /

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