



WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.01.2019**

**Coram:
THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

Crl.O.P(MD).No.1264 of 2019 and
Crl.M.P(MD).No.608 of 2019

S.Victor

... Petitioner/Respondent/Accused

-Vs-

The State rep.by
The Deputy Superintendant of Police,
Vigilance and Anti Corruption,
Kanyakumari Detachment,
Nagercoil.
(Crime No.4 of 2013)

... Respondent/Petitioner/Complainant

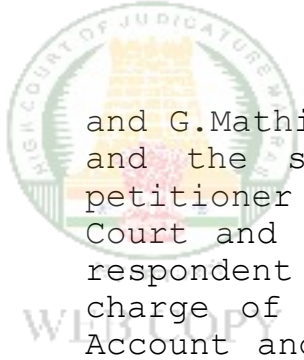
Prayer: This Petition is filed under Section 482 Cr.P.C to set aside the order of the learned Special Judge-Cum-Chief Judicial Magistrate, Nagercoil, Kanyakumari District made in Crl.M.P.No.944 of 2018, dated 27.12.2018 of allowing the application of the respondent herein for examining one Saravana Bhavan 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 forthwith.

For Petitioner	: Mr.S.Palani Velayutham.
For respondent	: Mr.M.Chandrasekaran Additional Public Prosecutor.

O R D E R

This Criminal Original Petition is filed, challenging the order passed by the learned Special Judge-Cum-Chief Judicial Magistrate, Nagercoil, Kanyakumari District made in Crl.M.P.No.944 of 2018, dated 27.12.2018.

2. The respondent filed a case against the petitioner in Crime No.4 of 2013, for the offences under Sections 167, 465, 466, 468, 419, 471, 472, 473, 474, 477(A) IPC r/w. Section 13(2) r/w. 13(1)(c) and 13(d) of Prevention of Corruption Act, 1981. After investigation, charge sheet has been filed and the same was taken on file in Special Case No.5 of 2015, on the file of the learned Chief Judicial Magistrate - Cum - Special Judge, Kanyakumari District at Nagercoil. During the trial, the respondent has filed a petition in Crl.M.P.No.313 of 2018, before the learned Chief Judicial Magistrate, Kanyakumari District to examine one A.Arunkumar



and G.Mathialagan as additional witness in Special Case No.5 of 2015 and the same was allowed. Aggrieved by the said order, the petitioner has preferred Crl.O.P(MD).No.10659 of 2108, before this Court and the same was dismissed on 19.07.2018. Subsequently, the respondent found that one more witness is necessary, who is in-charge of the particular Bank, at the time of opening the Bank Account and hence, he has filed another petition in Crl.M.P.No.944 of 2018 under Section 311 Cr.P.C., to examine one Saravana Bhavan as additional witness in Special Case No.5 of 2015 and the same was allowed by the trial Court on 27.12.2018 stating that examining the said witness is necessary in order to prove the case of the prosecution. Against which, the petitioner has filed the present Criminal Original Petition.

3. The learned counsel appearing for the petitioner would submit that the respondent has already filed Crl.M.P.No.313 of 2018, before the learned Chief Judicial Magistrate, Kanyakumai District to examine two additional witnesses and the same was allowed, by dismissing the Crl.O.P.(MD).No.10659 of 2018, filed by the petitioner before this Court. But, once again, with an intention to protract the case and fill up the lacuna left in the investigation, the respondent has filed a similar petition in Crl.M.P.No.944 of 2018 to examine yet another witness viz., Saravana Bhavan. The trial court ought not to have allowed the said application and hence, the order passed by the trial court is liable to be interfered with.

4. The learned Additional Public Prosecutor appearing for the respondent would submit that since the witness now sought to be examined is the competent person to speak about the opening of the account, the examination of the said witness is absolutely necessary to prove the case of the prosecution. So, the respondent has subsequently filed Crl.M.P.No.944 of 2018. Considering the said aspect, the trial court has also rightly allowed the said application. Hence, the order of the trial court is to be confirmed.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. Considering the facts and circumstances of the case and also considering the serious nature of offence, this Court finds that the examination of the witness Viz. Saravana Bhavan is necessary to prove the case of the prosecution. If he is summoned and examined regarding the documents, which were already in the Court, no prejudice would be caused to the petitioner herein. This Court does not accept the contention raised by the petitioner that in order to fill up the lacuna, the respondent has filed the petition to examine yet another witness. On a perusal of the material records, it is seen that already some documents were placed and some of the witnesses have spoken about that. In order to prove the opening of the accounts, the material witness is sought to be



examined. Therefore, this Court does not find any merit in this petition and this Criminal Original Petition is liable to be dismissed.

7. Accordingly, this Criminal Original Petition is dismissed. However, the respondent is directed to take steps to examine the witness as expeditiously as possible. Further, learned Special Judge-Cum-Chief Judicial Magistrate, Nagercoil, Kanyakumari District is directed to expedite the trial in Special Case No.5 of 2015 and complete the same within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

/ True Copy /

Sub Assistant Registrar (CS-)

trp

To

1.The Special Judge - Cum - Chief Judicial Magistrate,
Kanyakumari District at Nagercoil.

2. The Deputy Superintendant of Police,
Vigilance and Anti Corruption,
Kanyakumari Detachment,
Nagercoil.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.PALANIVELAYUTHAM, Advocate
(SR-43637[F] dated 30/01/2019)

Cr1.O.P(MD).No.1264 of 2019 and
Cr1.M.P(MD).No.608 of 2019
30.01.2019

ES/12.07.2019/3P/5C