



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2019

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THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.13409 of 2019

T.Poornachandran

... Petitioner

Vs.

State Represented by,
The Inspector of Police,
Vigilance and Anti-Corruption,
Nagercoil,
Kanyakumari District,
(Crime No.7 of 2010)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the order passed in Crl.M.P.No.4078 of 2019 in Special Case No.1 of 2012 on the file of the learned Special Judge-Cum-Chief Judicial Magistrate Court at Nagercoil, Kanyakumari District in respect of partly dismissing petition filed by the petitioner under Section 311 Cr.P.C for recalling of P.W.8 for cross examination within a time frame fixed by this Court.

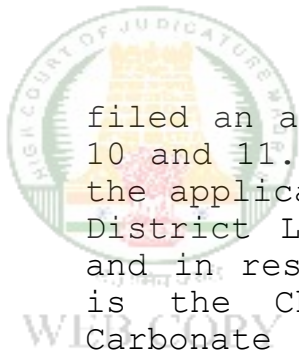
For Petitioner : Mr.J.Jawahar

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

ORDER

This petition has been filed by the petitioner / Accused as against the order passed by the learned Special Judge-cum-Chief Judicial Magistrate Court at Nagercoil, Kanyakumari District in Cr.M.P.No.4078 of 2019 in Special Case No.1 of 2012, dated 25.07.2019.

2.The petitioner is the sole accused in Special Case No.1 of 2012 and charges have been framed against him under Sections 7 and 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988. After the commencement of trial, P.Ws.8 to 11 were examined in chief on 21.07.2016, 11.08.2016, 23.08.2018 and 24.04.2019 respectively. But they were not cross-examined, since the petitioner is not able to contact the counsel. At that stage, the petitioner/ Accused



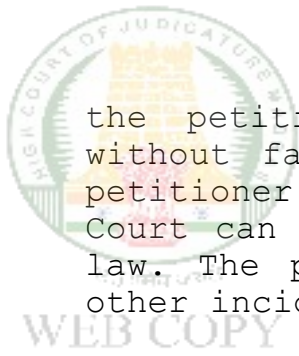
filed an application under Section 311 Cr.P.C., to recall P.Ws.8,9, 10 and 11. The Trial Court by order dated 25.07.2019 partly allowed the application on payment of cost of Rs.10,000/- to the Kanyakumari District Legal Services Authority for recalling P.Ws.9, 10 and 11 and in respect of P.W.8, the application was dismissed since P.W.8 is the Chemical analyst who conducted Phenolphthalein Sodium Carbonate test and the petitioner / Accused has not assigned any reason for recalling the said witness [P.W.8]. The said witness [P.W.8] was examined by the Trial Court on 21.07.2016 and the present application to recall P.W.8 was only filed in the year 2019 and therefore, the Trial Court felt that the accused has not taken any serious steps to recall the witness P.W.8 immediately after her examination on 21.07.2016.

3.Heard Mr.Jawahar, learned counsel appearing for the petitioner and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent Police.

4.The learned counsel appearing for the petitioner submitted that P.W.8 is the Chemical analyst, who conducted Phenolphthalein Sodium Carbonate test and it can be crucial evidence in determining of the guilt in the case pending against him. However, during the Trial, they could not cross-examine her on that day, since the counsel for the petitioner was not present. Further, learned counsel for the petitioner submitted that if one more opportunity is provided by fixing a specific date, they would cross examine the witness / P.W.8 without fail. He also undertakes to pay necessary travel expenses and other incidental expenses, if any, to be paid for the witness/P.W.8.

5.The learned Additional Public Prosecutor appearing for the respondent submitted that has no objection in allowing the petition. However, he would contend that since P.W.8 is the chemical analyst and she is hailing from Chennai, a specific date may be fixed for cross-examination by taking into account of the availability of the witness / P.W.8 to come and depose before the trial Court. The learned Additional Public Prosecutor on instructions, submitted that P.W.8 expressed on 17.10.2019 would be convenient for her to be present before the trial Court to depose.

6.Considering the facts and circumstances of the case, this Court feels that the Phenolphthalein test would also play a very crucial role in deciding the case and therefore, in order to offer a fair opportunity to the petitioner, this criminal original petition is allowed, by setting aside the impugned order in respect of dismissing the petition filed by the petitioner in Crl.M.P.No.4078 of 2019 in Special Case No.1 of 2012 on the file of the learned Special Judge-Cum-Chief Judicial Magistrate Court at Nagercoil, Kanyakumari District for cross-examining P.W.8. The learned Special Judge-cum-Chief Judicial Magistrate Court at Nagercoil, Kanyakumari District is directed to recall P.W.8 on 17.10.2019 and on that day,



the petitioner is directed to cross-examine the witness/P.W.8, without fail and without seeking any further adjournment. If the petitioner is not availing the opportunity on 17.10.2019, the Trial Court can proceed further and decide the matter in accordance with law. The petitioner shall pay the necessary travel expenses and other incidental expenses to the witness/P.W.8.

Sd/-

Assistant Registrar (Crl.Side)

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Sub Assistant Registrar

To

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

+1 CC to M/s.A.ARPUTHARAJ, Advocate (SR-90026[F] dated 27/09/2019

Crl.O.P. (MD)No.13409 of 2019
27.09.2019

vsg
MS/03.10.2019/3P.5C