



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2020

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

CrI.O.P (MD)No.14480 of 2020

R.Parasuraman

... Petitioner/Accused

Vs

State through the Inspector of Police,  
CBI, DCB, Chennai,  
RC/MA1/A0031.

... Respondent/Complainant

**PRAYER:** Petition filed under Section 482 Code of Criminal Procedure, to set aside the order dated 21.08.2020 allowing the petition under Section 311 of Cr.P.C., by the learned II Additional District Judge for CBI Cases, Madurai in CrI.M.P.No.159/2020 in C.C.No.14/2018 after calling for the records and examining the same.

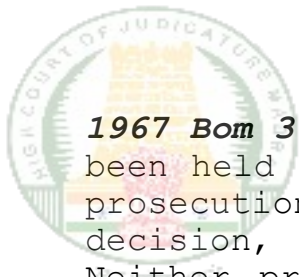
|                |                                                       |
|----------------|-------------------------------------------------------|
| For Petitioner | : Mr.S.Devasena                                       |
| For Respondent | : M/s.L.Victoria Gowri<br>Assistant Solicitor General |

**ORDER**

Heard the learned counsel appearing for the petitioner and the learned Assistant Solicitor General appearing for the respondent.

2.The petitioner is facing prosecution under the Prevention of Corruption Act. The respondent is the prosecuting agency. It appears that the respondent had not shown the sanctioning authority as a list witness. He also did not take expeditious steps for examining the sanctioning authority as a prosecution witness. Therefore, the learned trial Judge *suo motu* examined the sanctioning authority as a court witness. Thereafter, the respondent filed CrI.M.P.No.159 of 2020 under Section 311 of Cr.P.C., for treating the court summoned witness as a prosecution witness and for treating the exhibits marked through him as prosecution exhibits namely Ex.P1 and Ex.P2. The said prayer was allowed by the Court below and it was ordered that the sanctioning authority who was examined as C.W.1 will be included in the list of witness as L.W.21 and the documents marked through him will be treated as prosecution exhibits. Questioning the same, the accused filed this original petition.

3.The learned counsel appearing for the petitioner draws my attention to the decision of the Bombay High Court reported in **AIR** 1983 Bom 100. <https://hccertrcourts.gov.in/certrcourts>



**1967 Bom 378 (State Vs. Bhanuprasad Shyamlal Joshi)** in which, it has been held that the Court witness would be neither a witness for the prosecution nor for the defence. Respectfully following the said decision, I hold that the order impugned cannot be sustained. Neither provision of law nor any case law has been cited to show that the Court witness can be treated as a prosecution witness. Therefore, the order impugned in this petition is set aside. This Criminal Original Petition is allowed.

4.However, I am constrained to observe that the prosecution need not have taken out such a petition at all. The sanctioning authority was examined as a court witness. He had been subjected to cross examination also. The sanction order had also been brought on record. Thus, whatever the prosecution would have done by examining the said witness had already been brought on record. Therefore, failure to examine the said sanctioning authority as a prosecution witness will not cause any prejudice to the prosecution case. In my view, the very filing of the petition is unnecessary. In any event, the Court below erred in accepting the request made by the prosecuting agency.

5.With these observations, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmi

**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Inspector of Police,  
CBI, DCB, Chennai.

2.The Special Public Prosecutor for CBI,  
Madurai Bench of Madras High Court, Madurai.

CrI.O.P (MD) No.14480 of 2020

mj (CO)

TR(11.01.2021) 2P 3C