



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2021

DELIVERED ON : 10.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.O.P.NOS.23235 & 23368 OF 2021

AND

CRL.M.P.NOS.12735 & 12798 OF 2021

Senthil Kumaran

.. Petitioner in both Crl.O.Ps.

Vs.

Deputy Superintendent of Police, V & A-C,
No.11, Ramasamy Gounder Street,
Kamala Lakshmi Colony, Dharmapuri - 636 701.
Dharmapuri District.
(Cr.No.3/AC/2000)
(Cr.No.2/AC/2000)

.. Respondent in both Crl.O.Ps.

Prayer in Crl.O.P.No.23235 of 2021: Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records related to C.M.P.No.4718 of 2021 in Spl.C.C.No.2 of 2008, passed by the learned Special Judge / Chief Judicial Magistrate, Dharmapuri, dated 07.10.2021 and set aside the same.

Prayer in Crl.O.P.No.23368 of 2021: Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records related to C.M.P.No.4720 of 2021 in Spl.C.C.No.1 of 2008, passed by the learned Special Judge / Chief Judicial Magistrate, Dharmapuri, dated 07.10.2021 and set aside the same.

For Petitioner : Mr.T.Mohan
in both the Crl.O.Ps. for Mr.G.Mutharasu

For Respondent : Mr.C.E.Pratap,
in both the Crl.O.Ps. Government Advocate (Crl.Side)



COMMON ORDER

The Crl.O.P.No.23235 of 2021, has been filed seeking to set aside the order dated 07.10.2021, passed in C.M.P.No.4718 of 2021 in Spl.C.C.No.2 of 2008, by the learned Special Judge / Chief Judicial Magistrate, Dharmapuri, dismissing the petitioner's application to recall P.W.3 Mr.Nagarajan, I.A.S. for further cross examination. Likewise, Crl.O.P.No.23368 of 2021, has been filed seeking to set aside the order dated 07.10.2021, passed in C.M.P.No.4720 of 2021 in Spl.C.C.No.1 of 2008, by the learned Special Judge/Chief Judicial Magistrate, Dharmapuri dismissing the petitioner's application to recall P.W.1 Mr.Nagarajan, I.A.S. for further cross examination.

2. Since the issues involved in both the criminal original petitions are one and the same and between the same parties, both the Criminal Original Petitions are heard together and disposed of by means of this Common Order.

3. The brief facts leading to the filing of these petitions are as follow:

(i) The petitioner has been arrayed as A6 in Spl.C.C.No.2 of 2008 on the file of the learned Special Judge/Chief Judicial Magistrate, Dharmapuri and A3 in Spl.C.C.No.1 of 2008 on the file of the learned Special Judge/ Chief Judicial Magistrate, Dharmapuri.

(ii) The petitioner along with other accused stood charge for offences punishable under various provisions of the Prevention of Corruption Act, 1988. After framing charges, the trial has commenced and all the prosecution witness were examined, thereafter, on the side of the prosecution two documents were marked namely (a) Records handing over letter dated 11.01.2000, from Divisional Engineer (H&RS), Krishnagiri and (b) Records handing over letter dated 25.01.2000, from Superintending Engineer (NH), Salem and those documents viz., Ex.P119 and Ex.P120, were marked through the Investigating Officer, P.W.20.

(iii) Alleging that those two documents were collected in the month of January, 2000, the prosecution has deliberately suppressed the same and not filed it along with the final report. On those documents, the petitioner wants to cross examine P.W.3 the sanctioning authority, P.W.19 the Preliminary Enquiry Officer and P.W.20, the Investigating Officer in this case. In such circumstances, the petitioner filed an application under Section 311 Cr.P.C. to recall the sanctioning authority for cross examining them. It is also stated that in respect of



other two witnesses namely P.W.19 and P.W.20 separate petitions were filed.

(iv) The said application was opposed by the prosecution stating that, the trial has commenced in the year 2010 and all those witnesses were examined in the year 2016 and the prosecution side evidence was closed in the year 2016 itself, and the case is posted for defence side evidence. Now after five years, the present application has been filed only in order to drag on the proceedings. The respondent has filed all the documents like godown books, M-Books along with the final report. The latest documents were marked only to corroborate the evidence already available on record, if not new documents and there is no suppression of any material on the side of the prosecution. These documents were also placed before the sanctioning authority, after considering all these documents sanctions was accorded. Moreover, the accused have extensively cross examined the above prosecution witnesses and for that purpose he need not be recalled.

4. The trial Court after considering the materials dismissed the application in respect of P.W.3 the sanctioning authority. However, it is stated that, the trial Court allowed the application for recalling P.W.19 and P.W.20. Now challenging the above order, the present petitions have been filed.

5. Mr.T.Mohan, learned counsel appearing for the petitioner would vehemently contend that, the documents were marked at the end of the trial, even though those documents were available with the respondent police, they have deliberately suppressed the same and they have not produced the material before the sanctioning authority at the time of granting sanction. The said documents are crucial documents to prove the innocence of the petitioner and without considering those important documents, the sanctioning authority has granted sanction mechanically. Hence, the sanction itself is improper and based on that improper sanction, cognizance cannot be taken. In such circumstances only, the petitioner wants to cross examine the sanctioning authority. But the trial Court without considering the same, merely dismissed the application on the ground that P.W.3 is a retired I.A.S. officer and a senior citizen and he cannot be called to the Court frequently and also erroneously held that he was extensively cross examined on those aspects, when there was no occasion for the sanctioning authority to look into those documents before granting sanction. In support of his above contentions, the learned counsel relied upon the following judgments of the Hon'ble Supreme Court viz.,:



(i) U.T. of Dadra & Nagar Haveli and another Vs. Fatehsinh Mohansinh Chauhan reported in 2006 (7) SCC 529;

(ii) P.Sanjeeva Rao Vs. State of Andhra Pradesh reported in 2012 (7) SCC 56;

(iii) Natasha Singh Vs. Central Bureau of Investigation reported in 2013 (5) SCC 741 and

(iv) V.N.Patil Vs. K.Niranjan Kumar reported in 2021 (3) SCC 661.

6. Per contra, Mr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for the respondent would submit that, documents marked by the prosecution are not new documents, the prosecution has already filed the relevant documents like godown books and M-Books and only a detailed enquiry report was marked to corroborate the materials already produced by the prosecution. These documents were also produced before the sanctioning authority and after considering all those documents the sanctioning authority has given sanction. The sanctioning authority was already extensively cross examined by the defence side in the year 2011 itself. Hence, there is no necessary to recall him who is a retired I.A.S. officer, and a senior citizen who is residing in Chennai. The Trial Court after considering all those circumstances, rightly dismissed the application and there is no reason to interfere with the well considered order of the trial Court.

7. I have considered the rival submissions and also perused the records carefully.

8. The object underlying Section 311 Cr.P.C. is to discover the truth, and Courts should see that best available evidence must be brought to the Court to prove a fact and for that purpose it can recall the witness for further examination. It is the duty cast upon the Courts to see as to whether the witness who is sought to be recalled is essential for arriving a just decision of the case. A vast discretion conferred upon the Court, however the Court should exercise its discretion judicially. The Court having considered the material, is of the view that the application has been filed in abuse of process of law, the discretionary power shall not be exercised, and should not entertain such applications.

9. The instant case is of the year 2008 and the matter is pending trial for nearly 13 years, all the prosecution witness were examined in the year 2016 itself and prosecution evidence



was closed as early as on 03.03.2016. At that time, two documents namely, a detailed enquiry report and another communication of the Divisional Engineer were marked through P.W.20, the investigating officer on 03.02.2016, and the case is pending trial for defence evidence. Thereafter, i.e., after five years, the present application has been filed on 01.08.2021 to recall P.W.3 the sanctioning authority, and another separate application to recall P.W.19 who was the preliminary enquiry officer and P.W.20 the investigating officer to cross examine them on those two documents. However, the trial Court after considering the materials had allowed the application recalling P.W.19 and P.W.20 and allowed the defence to cross examine them. However, dismissed the present petition in respect of recalling of P.W.3 on the ground that he is only the sanctioning authority, already he has been extensively cross examined by the defence in the year 2011 itself, further he is a retired I.A.S. officer and a senior citizen and he need not be called to the Court unnecessarily. Now challenging the said order, the present original petitions have been filed.

10. Admittedly, those documents on which the petitioner wants to cross examine the prosecution witness were filed in the year 2016, after keeping quite for 5 years, now in 2021, the present applications have been filed. Further, the trial Court permitted to recall P.W.19 and P.W.20 who are witnesses connected to those documents and allowed accused to cross examine them. So far as this witness is concerned, he is only a sanctioning authority, now it is stated that at the time of granting sanction all these documents were also placed before him and after considering these documents, he granted sanction. From a perusal of the records, it could be seen that he has been extensively cross examined by all the accused. It is also stated that these documents were marked only to corroborate documents already been exhibited before the Court. Considering those circumstances and the fact that already has been cross examined extensively, there is no necessity to once again recall him for cross examination.

11. Considering those circumstances, this Court is of the considered view that these petitions are filed only in total abuse of process of law, only to drag on the proceedings. The judgments relied upon by the learned counsel appearing for the petitioner are dealing with the scope of Section 311 Cr.P.C. and is in no way applicable to the facts of these cases, and this Court is of the considered view that there is no irregularity or illegality in the orders passed by the trial Court, and find no merit in these quash petitions. Consequently, these petitions are only liable to be dismissed, accordingly dismissed.



Consequently, the connected miscellaneous petitions are also closed.

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Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge / Chief Judicial Magistrate,
Dharmapuri.
2. The Deputy Superintendent of Police, V & A-C,
No.11, Ramasamy Gounder Street,
Kamala Lakshmi Colony, Dharmapuri - 636 701.
Dharmapuri District.
(Cr.No.3/AC/2000)
(Cr.No.2/AC/2000)
3. The Public Prosecutor,
Madras High Court.

CrI.O.P.Nos.23235 & 23368 of 2021 and
CrI.M.P.Nos.12735 & 12798 of 2021

KG (CO)
RLP (27/12/2021)