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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.08.2021

Delivered on : 07.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.O.P. (MD)No.11683 of 2021

and

Crl.M.P. (MD)No.5977 of 2021

T.Poornachandran

: Petitioner/Sole Accused

Vs.

The State rep by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Wing,
Nagercoil Detachment,
Nagercoil.

(In Crime No.7 of 2010)

: Respondent/Complainant

PRAYER: This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, against the order dated 09.12.2020, made in C.M.P.No.3750 of 2020 in Spl.S.C.No.1 of 2012, on the file of the learned Special Judge-cum-Chief Judicial Magistrate (FAC), Nagercoil.

For Petitioner

: Mr.J.Senthil Kumaraiah

For Respondent

: Mr.M.Muthumanikkam

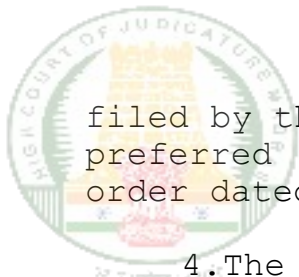
Government Advocate (Crl. side)

ORDER

This Criminal Original Petition has been filed praying to set aside the order dated 09.12.2020, made in C.M.P.No.3750 of 2020 in Spl.S.C.No.1 of 2012, on the file of the learned Special Judge-cum-Chief Judicial Magistrate (FAC), Nagercoil.

2.The petitioner is the sole accused in Spl.S.C.No.1 of 2012. He has been charged for the offence under Sections 7 and 13(2) r/w. Section 13(1)(d) of the Prevention of Corruption Act, 1988. Before the trial Court, after taking cognizance, the trial was proceeded from 2012 till date. Now, the case has been posted for examining the defence side evidence. In the said circumstance, while at the time the case was posted for examining defence side witnesses, on 18.11.2020 the petitioner herein filed an application under Section 311 Cr.P.C., before the trial Court praying to pass an order to recall the Investigation Officer, who is examined as P.W.11, for the purpose of further cross-examination.

3.The learned trial Judge after affording an opportunity to either side, by order dated 09.12.2020, dismissed the application



filed by the petitioner. Aggrieved over the same, the petitioner has preferred this Criminal Original Petition praying to set aside the order dated 09.12.2020.

4.The learned counsel appearing for the petitioner contended that in view of Section 311 Cr.P.C., the Court is having every power to issue summon or examine a person at any stage of the case. Only with a view to cross-examine P.W.11 in respect of the Vigilance and Anti-Corruption Manual and Newspaper publication alleged to have been published in Dinakaran, Tamil Daily, on 14.08.2010, the petitioner filed an application to cross-examine P.W.11. In the said situation, it is obligatory on the part of the Court to permit the petitioner to cross-examine P.W.11, who is the competent person to say about the Vigilance Anti-Corruption Manual and other things. In the said circumstances, without considering the importance of the prayer sought for by the petitioner, the learned trial Judge dismissed the application, which is erroneous in law and prayed for allowing this Criminal Original Petition.

5.Per contra, the learned Government Advocate (Criminal side) appearing for the respondent contended that the petitioner herein with a view to protract the trial proceedings, filed number of applications before the learned trial Judge without any reasons and therefore, prayed for dismissal of this Criminal Original Petition.

6.I have heard the learned counsel appearing for the parties and perused the materials available on record carefully.

7.Now, on considering the submissions made by the learned counsel on either side with relevant records, it is seen that the petitioner has stated in the application filed before the trial Court that the person, who involved in the process of trap, had investigated the case and filed a final report, which is against the Manual of Vigilance and Anti-Corruption. Further, in respect of the trap, there was a Newspaper publication on 14.08.2010. In this regard, it is necessary to get a clarification from P.W.11 - Investigation Officer.

8.Now, considering the reasons stated in the petition, if the person, who involved in the process of trap conducted investigation or not should be identified in view of the evidence given by the said person. In otherwise, separate cross-examination is not necessary.

9.Here, it is a case, already number of opportunities were given to the petitioner to cross-examine P.W.11 and the elaborate cross-examination has also been completed in the month of February 2020 itself. In respect of the second aspect, as rightly pointed out by the learned Government Advocate (Criminal side) appearing for the respondent Police, the Newspaper publication is not a primary evidence. Therefore, getting clarification in respect of the



Newspaper publication from P.W.11 is also not necessary.

10.A conspicuous reading of Section 311 Cr.P.C. would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression "'any'" has been used as a pre-fix to "'court'", "'inquiry'", "'trial'", "'other proceeding'", "'person as a witness'", "'person in attendance though not summoned as a witness'", and "'person already examined'". By using the said expression "'any'" as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. In this regard, in **Jamatraj Kewalji Govani Vs. State of Maharashtra** reported in **AIR 1968 SC 178**, our Hon'ble Apex Court has held as follows:-

"14. It would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it. In other words, where the court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the court is right in thinking that the new evidence is needed by it for a just decision of the case. If the court has acted without the requirements of a just decision, the action is open to criticism but if the court's action is supportable as being in aid of a just decision the action cannot be regarded as exceeding the jurisdiction." (Emphasis added) 15.2 In the decision reported in **Mohanlal Shamji Soni vs. Union of India** and another - 1991 Suppl.(1) SCC 271, this Court again highlighted the importance of the power to be exercised under Section 311 Cr.P.C. "

11.In the decision reported in **Mohanlal Shamji Soni vs. Union of India and another** reported in **1991 Suppl.(1) SCC 271**, our Hon'ble Apex Court again highlighted the importance of the power to be exercised under Section 311 Cr.P.C. as under in paragraph 10:-

"10....In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the new Code) are enacted whereunder any court by



exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and reexamine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated."

12.In the decision in **Raj Deo Sharma (II) vs. State of Bihar** reported in **1999 (7) SCC 604**, the proposition has been reiterated as under in Paragraph 9:-

"9. We may observe that the power of the court as envisaged in Section 311 of the Code of Criminal Procedure has not been curtailed by this Court. Neither in the decision of the five-Judge Bench in A.R. Antulay case nor in Kartar Singh case such power has been restricted for achieving speedy trial. In other words, even if the prosecution evidence is closed in compliance with the directions contained in the main judgment it is still open to the prosecution to invoke the powers of the court under Section 311 of the Code. We make it clear that if evidence of any witness appears to the court to be essential to the just decision of the case it is the duty of the court to summon and examine or recall and re-examine any such person."

13.Applying the ratio laid down in the above referred judgments, it is quite clear that the evidence of a particular person is necessary to decide the real issue. It is for the Court to recall a witness at any stage of the proceedings. Here, it is a case, already number of opportunities were given to the petitioner to cross-examine P.W.11. In otherwise, the Vigilance and Anti-Corruption Manual is an available document from the date on which the same came into force. Further, the copy of the paper publication is also available anywhere. Accordingly, the submission made by the petitioner that those documents are available recently is nothing but a lie invented for the purpose of this Petition. More than that, as rightly pointed by the learned Government Advocate (Criminal side) that the regulations narrated in the Vigilance and Anti-Corruption Manual is only directory in nature and the copy of the Newspaper publication is not primary evidence. Therefore, I am of the opinion that putting questions in respect of those documents are not at all relevant to decide the issue raised before the trial Court. The Court below has considered the same in



proper perspective and dismissed the application.

14. In the light of the above observations, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed.

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Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar (CS)

To

1. The Special Judge-cum-Chief Judicial Magistrate (FAC),
Nagercoil.
2. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Wing,
Nagercoil Detachment,
Nagercoil.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order in
CrI.O.P.(MD)No.11683 of 2021
07.09.2021

RS (13.09.2021) 5P 4C