



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2021

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THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.O.P. (MD).No.20618 of 2021

A.Saminathan

...Petitioner/Petitioner/
Accused No.1

Vs.

The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Sivagangai, Sivagangai District.

...Respondent/Respondent/
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to set aside the order made in Cr.M.P.No.498 of 2021 in Spl.CC.No.20 of 2014 on the file of the Special Court for Trial of Cases under Prevention of Corruption Act, Sivagangai, dated 23.11.2021.

For Petitioner : Mr.S.Ramsundarvijayraj.
For Respondent : Mr.RMS.Sethuraman,
Additional Public Prosecutor.

ORDER

The Criminal Original Petition is filed seeking orders to set aside the order made in Cr.M.P.No.498 of 2021 in Spl.CC.No.20 of 2014 on the file of the Special Court for Trial of Cases under Prevention of Corruption Act, Sivagangai, dated 23.11.2021, directing the petitioner to pay a sum of Rs.500/- each to P.W.1 to P.W.16 as batta.

2. It is not in dispute that after the advancement of arguments, the learned trial Judge has altered the charges vide order dated 19.03.2021. Aggrieved by the said alteration of charges, the petitioner has filed a petition in CrI.OP.(MD)No.5875 of 2021 before this Court and this Court vide order dated 03.09.2021, directed the learned Trial Judge to permit the petitioner to re-call the witnesses on the altered charges and further observed that if there are materials to meet the altered charges and cross-examine the witnesses, when the witnesses are recalled by the prosecution. Thereafter, the petitioner/accused has filed a petition under Section 311 of Cr.P.C, seeking orders to re-call the witnesses P.W.1 to P.W.16 to cross-examine and the learned Trial Judge has passed impugned order dated 23.11.2021 allowing the petition and permitted to re-call the witnesses P.W.1 to P.W.16 and also directed the petitioner to pay a sum of Rs.500/- each to P.W.1 to P.W.16 as batta.



3. As rightly pointed out by the learned counsel for the petitioner, even in the order passed in Crl.O.P(MD)No.5875 of 2021, this Court has directed the learned Trial Judge to permit the petitioner to cross examine the witnesses, when the witnesses are recalled by the prosecution.

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4.The learned Additional Public Prosecutor would submit that they have filed a memo stating that they are not having any further chief examination with respect to the altered charges. Section 217 of the Code of Criminal Procedure contemplates that whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined. No doubt, the Court can refuse to re-call or re-summon the witnesses, if the Court is of the opinion that the same is for the purpose of vexation or delay or for defeating the ends of justice. Generally, the accused has right to re-call the prosecution witness, after alteration of the charges.

5.In the case on hand, since the charges were altered by the Court, even though the prosecution is not interested in adducing further evidence with regard to the altered charges, the Court has to permit the defence to cross examine the witnesses already examined. But in this case, the learned trial Judge has directed the petitioner to pay a sum of Rs.500/- as batta for each of the witnesses, as if the petitioner was at fault.

6.It is not the case of the prosecution or the Court that the petitioner has sought to recall the witnesses for cross examination for the purpose of vexation or delay or for defeating the ends of justice. Considering the above, the impugned order passed by the learned trial Judge imposing the directions to pay batta, that too at Rs.500/- for each of the witnesses (P.W.1 to P.W.16) by the petitioner is not good in law and as such, the same is liable to be set aside.

7.In the result, this Criminal Original Petition is allowed and the learned Trial Judge is directed to recall the witnesses (P.W.1 to P.W.16) by summoning them and permit the petitioner to cross examine them.

Sd/-

Assistant Registrar (P&A)

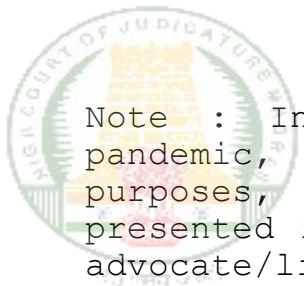
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Sub Assistant Registrar(CS)

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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.

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To

- 1.The Special Judge for Trial of Cases
under Prevention of Corruption Act,
Sivagangai.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Sivagangai, Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CRL.O.P. (MD) .No.20618 of 2021
23.12.2021

AP (20.01.2022) 3P 4C