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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

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THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.8912 of 2022

P.Bhuvaneswari

...Petitioner / Accused

Vs.

The State of Tamil Nadu Represented by,
The Inspector of Police,
Vigilance and Anti Corruption,
City Special Unit - III,
Chennai - 600 035.
(Crime No.9/AC/2013)

...Respondent / Complainant

Prayer :- Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to set aside the dismissal order dated 03.03.2022 passed in Crl.M.P.No.10355 of 2021 in Spl.C.No.7 of 2014 on the file of the Chief Judicial Magistrate Court, Chengalpet and consequently direct the trial Court to permit the petitioner to recall the prosecution witnesses as per petition filed under Section 311 of Cr.P.C. for further cross examination.

For Petitioner : Mr.K.M.Subramanian

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor,
High Court of Madras.

ORDER

This petition is filed to set aside the dismissal order dated 03.03.2022 passed in Crl.M.P.No.10355 of 2021 in Spl.C.No.7 of 2014 on the file of the Special Judge/Chief Judicial Magistrate Court, Chengalpet and direct the trial Court to permit the petitioner to recall the prosecution witnesses for further cross examination.



2.It is seen from the petition averments in CrI.M.P.No.10355 of 2021 and the submission of learned counsel for the petitioner that the respondent filed a false case against the petitioner. Due to the poverty and financial constraints, petitioner was not able to get any assistance for appointing a suitable lawyer, who is well versed in handling matters pertaining to corruption cases. Only now, petitioner's brother has got employment and he is in a position to provide financial assistance to conduct the case. That apart, petitioner was suffering from severe mental illness and she was not in a position to explain ground realities to her erstwhile advocate. She was not able to explain the facts of the case including motive of the enmity of the false case against the petitioner. In such circumstances, petitioner wants to recall P.W.1 to P.W.3, P.W.6, P.W.8, P.W.9 and P.W.10, for the reason that cross examination already done was not effective.

3.Per contra, learned Additional Public Prosecutor submitted that P.W.1 to P.W.3, P.W.6, P.W.8, P.W.9 and P.W.10 were cross examined in detail. Prosecution evidence was closed on 21.11.2019. Witnesses cannot be recalled for the reason that, there is a change of Advocate. Thus, he prayed for dismissal of this petition.

4.Considered rival submissions and perused the records.

5.From the submissions made by the learned counsel appearing for the parties, it is clear that the prosecution witnesses now sought to be recalled for cross examination, namely P.W.1 to P.W.3, P.W.6, P.W.8, P.W.9 and P.W.10 were already cross examined in detail. That apart, prosecution evidence was closed on 21.11.2019. Therefore, when this Court expressed that the request for wholesale recall of witnesses for the purpose of further cross examination cannot be entertained, learned counsel for petitioner restricted his prayer for the recall of P.W.9 and P.W.10 alone, for the purpose of cross examination. Considering the restricted prayer now sought by the learned counsel for the petitioner, during the course of his submission, this Court modifies the order dated 03.03.2022 in CrI.M.P.No.10355 of 2021 in Spl.C.No.7 of 2014 passed by the learned Chief Judicial Magistrate, Chengalpet and allows the recall of P.W.9 and P.W.10 for the purpose of cross examination. Trial Court is directed to fix a date for the purpose of cross examination of P.W.9 and P.W.10. on a particular day. On such date, petitioner should complete the cross examination of these witnesses.

6.In fine, this Court modifies the order dated 03.03.2022 in CrI.M.P.No.10355 of 2021 in Spl.C.No.7 of 2014 passed by the learned Chief Judicial Magistrate, Chengalpet and allows the recall of P.W.9 and P.W.10 for the purpose of cross examination



as indicated above. Accordingly, Criminal Original Petition in Crl.O.P.No.8912 of 2022 is partly allowed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
Chengalpet.
2. The Inspector of Police,
Vigilance and Anti Corruption,
City Special Unit - III,
Chennai - 600 035.
(Crime No.9/AC/2013)
3. The Public Prosecutor,
High Court of Madras.

Crl.O.P.No.8912 of 2022

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