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Crl.O.P.No.24692 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.24692 of 2022

Sridhar

... Petitioner

Vs.

State rep by
The Inspector of Police,
Central Crime Branch,
Chit & Kanthuvatti Wing, Team -VII,
Chennai.
(Crime No.67 of 2020)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order passed by the learned Metropolitan Magistrate, for Exclusive Trial of CCB cases and CBCID Metro cases, Chennai in Crl.M.P.No.25202 of 2022 dated 28.09.2022 in C.C.No.6791 of 2021 and allow the 311 petition filed by the petitioner.

For Petitioner : Mr.N.V.Prakash

For Respondent : Mr.S.Santhosh,
Government Advocate (crl.side)

ORDER



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WEB COPY This Criminal Original petition has been filed to set aside the order passed by the learned Metropolitan Magistrate, for Exclusive Trial of CCB cases and CBCID Metro cases, Chennai in Crl.M.P.No.25202 of 2022 dated 28.09.2022 in C.C.No.6791 of 2021.

2.The learned Counsel appearing for the petitioner submitted that the petitioner is arrayed as A2 in C.C.No.6791 of 2021 on the file of the learned Metropolitan Magistrate, for Exclusive Trial of CCB cases and CBCID Metro cases, Chennai and they were prosecuted by the respondent police for having committed offence punishable under Sections 406, 420, 506(i) of IPC Section 76(1) r/w 76(1) Chit Funds Act. He further submitted that in this case, the entire allegation is against A1 and A1 died now. Therefore, the petitioner/A2 alone has to face the prosecution case. Due to unavoidable circumstances, the petitioner was unable to cross examine the prosecution witnesses. In the Trial Court, the prosecution examined 20 witnesses. Now, the petitioner is seeking one more chance to cross examine the witnesses to place his defence. The petitioner is now ready to cross examine the witnesses without getting any adjournment and ready to pay the cost to the witnesses. Hence, the present petition has been filed.



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3. The learned Government Advocate (crl.side) submitted that the prosecution witnesses have been examined and completed on 05.08.2022.

Now, the case is posted for questioning under Section 313 of Cr.P.C.

4. I have considered the matter in the light of the submissions made by the learned counsel for the petitioner and the learned Government Advocate (crl.side) for the respondent

5. Perusal of records reveals the fact that the petitioner is A2 in C.C.No.6791 of 2021 on the file of the learned Metropolitan Magistrate, for Exclusive Trial of CCB cases and CBCID Metro cases, Chennai. The respondent police prosecuted the petitioner along with the other accused for having committed offences punishable under Sections 406, 420, 506(i) of IPC Section 76(1) r/w 76(1) Chit Funds Act. In the Trial Court, prosecution examined 20 witnesses. No doubt, all the prosecution witnesses have to be cross examined on the same day itself. The Hon'ble Supreme Court also insisted to cross examine the witnesses on the same day or on the following days. Speedy trial is the spirit of Article 21 of the Constitution. At the same time, the accused had right to cross examine the witnesses. A fair trial is also assured by the Constitution. In this circumstances, the Hon'ble Apex Court in



the case of ***Rajaram Prasad Yadav /vs/ State of Bihar and others*** reported in

Crl.A.No.830 of 2013 laid down the principles to be followed while

considering an application under Section 311 Cr.P.C, which reads as follows:-

' (a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

(b) The exercise of the widest discretionary power under Section 311 Cr.P.C should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

(c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

(d) The exercise of power under Section 311 Cr.P.C should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

(e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

(f) The wide discretionary power should be exercised judiciously and not arbitrarily.

(g) The Court must satisfy itself that it was in every



respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

(h)The object of Section 311 Cr.P.C simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

(i)The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

(j)Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

(k)The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

(l)The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

(m)The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of



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rebuttal is given to the other party.

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(n)The power under Section 311 of Cr.P.C must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right [Rajaram Yadav v State of Bihar, AIR 2013 SC 3081 : 2013 Cr LJ 3777 (SC) : (2013) 14 SCC 461].'

6. In the present case, the petitioner/A2 fails to cross examine the witnesses. However, all the allegation is against A1 and now A1 died. The petitioner alone has to face the prosecution case. In order to give fair chance, the petitioner has to be permitted to cross examine the witnesses. Therefore, in order to give one more chance to the petitioner/A2 to face the prosecution case and to place his defence, I am inclined to allow this petition.

7. Accordingly, the order passed by the learned Metropolitan Magistrate, for Exclusive Trial of CCB cases and CBCID Metro cases, Chennai in Crl.M.P.No.25202 of 2022 in C.C.No.6791 of 2021 dated 28.09.2022 is hereby Set aside. The Trial Court is directed to recall the prosecution witnesses and the petitioner is also directed to cross examine all



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the witnesses without getting any adjournment and pay the cost to the witnesses.

8. With the above direction, this Criminal Original Petition stands allowed.

13.10.2022

Internet:Yes

Index:Yes/No

Speaking/Non speaking order

shk

V.SIVAGNANAM, J.



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shk

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- To
1. The learned Metropolitan Magistrate,
for Exclusive Trial of CCB cases and CBCID Metro cases,
Chennai
 2. The Inspector of Police,
Central Crime Branch,
Chit & Kanthuvatti Wing, Team -VII,
Chennai.
 3. The Public Prosecutor,
High Court of Madras.

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