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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/12/2022

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.OP(MD)No.21053 of 2022

R.Mony : Petitioner/A1

Vs.

State represented through
The Inspector of Police,
Vigilance and Anti-Corruption,
Kanyakumari Detachment @
Nagercil. : Respondent/Complainant

Prayer:- This Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to set aside the order passed by the Special Judge-cum-Chief Judicial Magistrate, Nagercoil, Kanyakumari District in Cr.M.P No.10124 of 2022 in Special Case No.05 of 2008, vide order, dated 27/10/2022 and consequently direct the aforesaid Special Judge to recall the prosecution witness namely PW3 and PW10 for the purpose of cross examination.

For Petitioner : Mr.R.Anand

For Respondent : Mr.S.Ravi
Additional Public Prosecutor



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O R D E R

This criminal original has been filed seeking in order to set aside the order passed by the Special Judge-cum-Chief Judicial Magistrate, Nagercoil, Kanyakumari District in Cr.M.P No.10124 of 2022 in Special Case No.05 of 2008, dated 27/10/2022 and consequently, direct the aforesaid Special Judge to recall the prosecution witness namely PW3 and PW10 for the purpose of cross examination.

2.The petitioner is facing the charges for the offences under sections 7, 12 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act before the trial court.

3.During the trial process, the petitioner filed a petition under section 311 of Cr.P.C to recall the witnesses namely PW3 and PW10 for further cross examination. In pursuance of some materials brought on record, that was objected by the prosecution to the effect sufficient opportunity was given to the petitioner to cross examine the witnesses, on the basis of the Ex.P6 and no further chance need be given.



4.The trial court has stated that PW3 and PW10 were examined in full with regard to Ex.P6 and PW3 was examined in chief, on 20/05/2011 and he was not cross examined immediately. After a lapse of nine years only, the petition filed stating that PW3 was not cross examined by A2. Later only, he cross examined PW3. Similarly with regard to PW10, his cross examination was over. But some of the important points, according to the petitioner omitted to elicit through the cross examination, which according to the trial court is not proper and repeatedly recalling of the witnesses is not permissible under law.

5.So the learned counsel appearing for the petitioner would submit that there is a clear contradiction with regard to the facts mentioned in Ex.P6 and the evidence of PW3 and PW10. The contradiction can be elicited only through mouth of PW10, who is the Investigating Officer and PW3 the witness to the document. So even though, he has cross examined them, when direct contradictions are found, if opportunity is denied, that will cause serious prejudice to the defence.



6.The learned Additional Public Prosecutor would submit that this is nothing, but an attempt to drag on the proceedings; As mentioned by the trial court, sufficient opportunity was given; Even then PW3 was cross examined belatedly; PW10 was cross examined in full and the conduct of the petitioner must be taken into account.

7.Reading of the petition that was filed by petitioner shows that during the course of trial process, quite contra to the facts mentioned in Ex.P6, which is a post-trap mahazar, improvement has been made by the prosecution. We need not go to the relevancy of the facts, which got to be elicited, for the purpose of deciding this petition, the considered view of this court may not be proper, which may cause prejudice to the prosecution as well as the defence.

8.Suffice to say that when the grievance has been expressed by the petitioner to the effect that prosecution has made improvement during the course of trial, quite contra to the facts mentioned in Ex.P6. I am of the considered view in the interest of fair trial and affording opportunity to the petitioner, even though



To,

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- 1.The Special Judge-cum-Judicial Magistrate,
Nagercoil,
Kanyakumari District.
- 2.The Inspector of Police,
Vigilance and Anti-Corruption,
Kanyakumari Detachment @ Nagercil.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G . ILANGO VAN , J



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