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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated:23/12/2022

PRESENT

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

Crl.OP(MD)No.21970 of 2022

K.Soundararaj : Petitioner/Accused

Vs.

State through
The Deputy Superintendent of Police
Vigilance and Anti Corruption,
Tirunelveli district. : Respondent/Complainant

PRAYER:- This criminal original petition has been filed under section 482 of the Criminal Procedure Code to call for the records pertaining to the evidence let in cross examination by the defence witness No.6 Mr.A.Shanmugapandian on its entirety in connection with the case in Special Case No.62 of 2014 pending on the file of the Special Court for Exclusive Trial of Prevention of Corruption Act Cases, Tirunelveli and set aside the same.

For Petitioner : Mr.R.Anand

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

**O R D E R**

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This criminal original petition is filed seeking in order to set aside the evidence let in cross examination by the defence witness No.6 Mr.A.Shanmugapandian on its entirety in connection with the case in Special Case No. 62 of 2014 pending on the file of the Special Court for Exclusive Trial of Prevention of Corruption Act Cases, Tirunelveli.

2.The facts in brief:-

The petitioner is facing the charges for the offences under sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 before the trial court. During the course of trial process, DW6 was examined on the side of the petitioner as defence witness and he was also cited as prosecution witness No.5 in the final report. But the prosecution, without assigning any reason did not examine him. But he was examined on the defence side. During the course of the cross examination by the prosecution, an attempt was made by the Public Prosecutor to extract the evidence with regard to the statement that was recorded under section 161(2) Cr.P.C



by the Investigating Officer, during the course of the investigation.

3. That was objected by the petitioner stating that no such evidence is permissible under law; The trial court stopped recording the evidence of the witness on the objection made by the petitioner. Over the above said, this criminal original petition has been preferred.

4. Heard both sides.

5. Perusal of the deposition of DW6 shows that the prosecution cross examined him with regard to the statement recorded under section 161(2) Cr.P.C and he also admitted some portion in the statement. But denied the other portions. He admitted the signature found in Ex.P6 and the admitted signature was marked as Ex.P5 and also in the arrest memo.

6. Further reading of the deposition shows that since objection has been raised by the accused, further cross examination with regard to 161(2) Cr.P.C was stopped by the trial court.



7. Aggrieved over the above said recording of the above said evidence, this criminal original petition has been filed.

8. The learned counsel appearing for the petitioner would submit that as per the judgment of the Hon'ble Supreme Court in the case of ***Mrs. Shakila Khader and another Vs. Nausheer Cama and others (AIR 1975 SC 1324)***, such a course is not available to the prosecution.

9. No doubt that such earlier statement cannot be used by the prosecution to contradict the evidence, when he comes for defence side. But however, a portion of the recording evidence cannot be eschewed or struck off. As stated by the Public Prosecutor, if the evidence was admitted illegally, then that evidence need not be considered by the trial court at the time of judgment.

10. More-over, it is also seen that only a portion of the evidence is objected by the petitioner, striking off the portion of evidence is not permissible.



11. So I am of the considered view that this petition can be disposed of with an observation to the effect that the above said portion of the evidence need not be taken into account by the trial court at the time of final hearing. But however, the learned counsel appearing for the petitioner would submit that even the discretionary power should not be given to the learned trial Judge. But this sort of argument cannot be advanced and taken into account.

12. In the result, this criminal original petition is **disposed of**, of course with an observation to the effect that the trial court may not take into consideration the portion of the evidence recorded, which is not admissible in law in view of the judgment of the Hon'ble Supreme Court in the case of ***Mrs. Shakila Khader and others Vs. Nausheer Cama and others (AIR 1975 SC 1324)*** on this aspect, at the time of final disposal.

23.12.2022

Index: Yes/No
Internet: Yes/No
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To,

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- 1.The Special Court for
exclusive Trial of Prevention of
Corruption Act cases,
Tirunelveli.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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