



Crl.O.P.No.3101 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

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THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.3101 of 2023

and

Crl.M.P.No.1847 of 2023

Suresh Gandhi

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
Economic Offences Wing-II,
Salem District.

(Crime No.8 of 2013)

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C.,
pleaded to set aside the order passed by the leaned Special Judge, Special Court
for TNPID Cases, Coimbatore in C.M.P.No.2331 of 2022 in C.C.No.8 of 2015
dated 14.12.2022.



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For Petitioner : Mr.C.D.Francis
For Respondent : Mr.S.Santhosh
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed seeking to set aside the order passed by the learned Special Judge, Special Court for TNPID Cases, Coimbatore in C.M.P.No.2331 of 2022 in C.C.No.8 of 2015 dated 14.12.2022.

2. Learned counsel for the petitioner submitted that the prosecution witnesses had been recalled by prosecution for the purpose of further chief examination. In due course of further chief examination, prosecution witnesses have not supported the case of prosecution and retracted from their earlier statements. They are PW1 to PW25, PW27, PW29 to PW31, PW33 to PW47. In such circumstances, the petitioner has filed a petition to examine the Deputy Superintendent of Police (on duty on 25.08.2022) Economic Offence Wing-II, Salem and the Deputy Superintendent of Police (on duty for the period of 2017-18), who is the Investigating Officer, as defence witnesses. This petition was



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dismissed by the learned trial Court. Challenging the said petitioner, the petitioner has filed this present petition.

3. Learned Government Advocate (Crl.Side) submitted that the first witness is not at all concerned in anyway with the present case. The second witness, who was already examined as PW58 and he was also cross examined by the accused. It is not possible and legal to examine the prosecution witness again as defence witness.

4. Considered rival submissions and perused the records. Perusal of the order passed by the learned Special Judge shows that this case was taken on file in C.C.No.8 of 2015 on 12.06.2015. The prosecution evidence was commenced on 01.03.2017 and closed on 22.04.2022 with PW58. The final questioning under Section 313(1)(b) of Cr.P.C., was completed on 04.05.2022. Since no defence evidence was produced, defence evidence was closed and the case posted for arguments. The petitioner filed petitions in Cr.M.P.No.1155, 1156, 1157 of 2022 to recall PW28 and that was allowed on 06.08.2022. Subsequently,



the prosecution filed a petition in Cr.M.P.No.1521 of 2022 to recall PW1 to 47 for further chief examination and that was allowed on 22.09.2022. These witnesses were further examined in chief, but the petitioner did not cross examine them. Further the accused 3, 6, 7 filed an application to recall PW1 to PW5, PW33, PW35 and PW36 for the purpose of cross examination in Cr.M.P.No.2049 of 2022 and that was dismissed on 07.11.2022. Petitioner and other accused filed two separate applications in Cr.M.P.Nos.2098 & 2099 of 2022 to recall PW6, PW7, PW10, PW11, PW13, PW16 to PW20, PW22, PW23, PW27, PW29 and PW31 for cross examination and that was allowed on payment of witness batta. However, the petitioner and others have not paid witness batta and process fee, therefore, the evidence was closed and posted for arguments. At this stage, this petition is filed. It is the view of the learned trial Judge that the first witness that is the present Deputy Superintendent of Police (on duty 2022) is not an Investigating Officer. The other Deputy Superintendent of Police served during 2017-18 was already examined as PW58 and he cannot be examined as defence witness. On these reasons, the learned trial Judge dismissed the petition.



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5. Considering the detailed order passed by the learned trial Judge and the reasons for dismissal of the petition filed under 311 Cr.P.C., this Court does not find any reasons to take different view of the matter. It is not necessary to examine the Deputy Superintendent of Police, who is no way connected with this case. There is no reason also given in the petition as to why the petitioner wants to examine these witnesses as defence witness, especially, the witness who was already examined as PW58 on the side of the prosecution. It is not legal to examine a person as a witness for prosecution and defence. Therefore this Court finds no reason to interfere with the order passed by the learned trial Judge and the order is confirmed.

6. As a result, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking/Non speaking order

Neutral Citation Case: Yes/No

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G.CHANDRASEKHARAN, J.

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To

1. The Inspector of Police,
Economic Offences Wing-II,
Salem District.
2. The Public Prosecutor,
High Court of Madras.

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and Crl.M.P.No.1847 of 2023**

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