



Crl.O.P.No.5314 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 17.03.2023**

**CORAM :**

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA**

**Crl.O.P.No.5314 of 2023**  
**and Crl.MP.No.3346 of 2023**

M/s.S.J.S.Network and Services Pvt Ltd.,  
rep by its proprietor Mr.T.R.Dhanasekar  
Having office at No.204, Purasawalkam High Road,  
2nd Floor, Academy Court,  
Purasawalkam, Chennai -7.

2.Mr.T.R.Dhanasekar  
partner of M/s.S.J.S.Network and Services Pvt Ltd.,  
at No.204, Purasawalkam High Road,  
2nd Floor, Academy Court,  
Purasawalkam, Chennai -7.

3.Mr.Karunanithi  
s/o.late M.R.Raghavan  
partner of M/s.S.J.S.Network and Services Pvt Ltd.,  
at No.204, Purasawalkam High Road,  
2nd Floor, Academy Court,  
Purasawalkam, Chennai -7.

.. Petitioners

-Vs-

State rep by Inspector of Police,  
Central Bureau of investigation  
CBI/EOW/Chennai.

.. Respondent



Crl.O.P.No.5314 of 2023

**Prayer** : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records in Crl.MP.No.1810 of 2023 in CC.No.9 of 2009 on the file of the Court of Additional Chief Metropolitan Magistrate, Egmore, Chennai - 8 dated 19.01.2023.

For Petitioners : Mr.P.M.Bakthavatsalam

For Respondent : Mr.K.Srinivasan, Spl.PP.

### **ORDER**

This petition is filed seeking to call for the records in Crl.MP.No.1810 of 2023 in CC.No.9 of 2009 dated 19.01.2023 passed by the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. The learned counsel for the petitioners would submit that the petitioners are arrayed as A3 to A5 in CC.No.09 of 2009 pending trial on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai. The respondent while examining PW12 and PW21 had marked statement of accounts belonging to the petitioners. At that time, the petitioners had not cross examined the witnesses, later on perusal of the statement of accounts they have found there are some discrepancies and thereby, the petitioners have filed applications under Section 311 Cr.PC to recall and reexamine the



witnesses so as to ensure complete fairness in trial, whereas the trial Court without taking into consideration that the evidence of PW12 and PW21 are essential to arrive at the just decision of the case had dismissed the application. Hence, the present petition has been filed. He would submit that an obligation is cast on the trial Court to ensure fair trial by providing reasonable opportunity to recall the witness whereas the trial judge without considering the necessity had dismissed the application and thereby he would seek to set aside the order of the trial Court dated 19.01.2023.

3. The learned Special Public Prosecutor would submit that PW12 was examined in chief on 01.09.2016 and PW21 was examined in chief on 10.02.2017, on the day of chief examination, the petitioners along with their counsel were present in the Court. The statement of accounts were marked through them on the same day, however despite availability of opportunity to cross examine the witnesses, the petitioners counsel had stated no cross and the same was also found to be recorded in the deposition of witnesses. Later A1 and A2 had filed petition under Section 311 Cr.PC to cross examine the PW12 and the same was allowed in Crl.MP.No.1718 of 2019, upon the said order A1 and A2 have cross examined the witnesses PW12 on



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27.11.2019. Similarly, A1 and A2 had filed another petition to recall PW21 and the same was allowed and the witnesses was cross examined on 26.08.2021. Even on that day, the petitioners have not taken any steps or chosen to cross examine and not even filed any petition under Section 311 Cr.PC, when PW12 and PW21 had appeared on previous occasion for cross examination. Further, the evidence on the side of the prosecution was closed on 10.01.2023. Even on that day, the petitioners have not filed any application to recall and thereafter, questioning was over and chance was also given to the petitioners to let in evidence on the side of the defence and even at that time they have not availed that opportunity also. Only at the fag end when the case had been posted for arguments on the side of the defence, the petition has been filed. The trial Court rightly finding that the petition has been filed only to delay and to drag on the proceedings which has been pending for 13years had dismissed the application. Thereby, he would submit that the Court may be pleased to dismiss the application.

4. Heard both sides and perused the materials available on record.



5. The case has been pending from 2019, the witnesses PW12 was examined in chief on 01.09.2016 and PW21 was examined in chief on 10.02.2017, on that day despite the availability of petitioners and their counsel they have not opted to cross examine the witnesses. Subsequently, A1 and A2 have filed petition to recall the witnesses and they have been recalled by the trial judge. Even at that time, the petitioners have not chosen to cross examine the witnesses. Subsequently, the petitioners have filed application in Crl.MP.No.1810 of 2023 wherein it has been stated that the counsel for the accused was unable to attend the Court and thereby they were unable to cross examine the witnesses. Whereas, the trial Court had found that the accused as well as their counsel were present and they have not chosen to cross examine the witnesses. Further the Court had also found that the petition has been filed vaguely without any application of mind and without any merits only to drag on the proceedings even after 13years. This Court finds no infirmity or illegality in the order passed by the trial Court on 19.01.2023.

6. The Hon'ble Apex Court in **Swapan Kumar Chatterjee V. Central Bureau of Investigation** reported in **2019 (14) SCC 328** had held that



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prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice which should not be allowed. Similarly, it has also been held the Court should not encourage the filing of successive applications for recall of a witness under Section 311 Cr.PC. In this case, PW12 and PW21 have earlier been recalled and cross examined and the petitioners have failed to cross examine them.

7. In view of the above, the criminal original petition stands dismissed. Consequently, connected miscellaneous petition is closed.

**17.03.2023**

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To

1. The Additional Chief Metropolitan Magistrate,  
Egmore, Chennai
2. Inspector of Police,  
Central Bureau of investigation  
CBI/EOW, Chennai.
3. The Special Public Prosecutor (CBI)  
High Court, Madras.



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**A.D. JAGADISH CHANDIRA. J.,**

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