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Crl.O.P.Nos.3203, 3123 of 2023 and 30700 of 2022

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

**DATED: 14.02.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN**

**Crl.O.P.Nos.3203, 3123 of 2023 and 30700 of 2022**

**Crl.O.P.No.3203 of 2023:**

P.Devaraj

... Petitioner

Vs.

The State represented by  
The Inspector of Police,  
Economic Offence Wing,  
Namakkal District.

... Respondent

**PRAYER:** This Criminal Original Petition filed under Section 482 of Cr.P.C., to transfer the case in C.C.No.27 of 2012 on the file of the Court of the Special Judge, Special Court under TNPID Act, Coimbatore District to the file of any other competent Court having jurisdiction to try the same and consequently, direct the such transferee Court to dispose of the same.

For Petitioner : Mr.S.Sheik Ismail  
For Respondent : Mr.S.Santhosh  
Government Advocate (Criminal Side)



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**Crl.O.P.No.3123 of 2023:**

P.Devaraj

... Petitioner

Vs.

The State represented by  
The Inspector of Police,  
Economic Offence Wing,  
Namakkal District.

... Respondent

**PRAYER:** This Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order passed in Crl.M.P.No.54 of 2023 dated 24.01.2023 in C.C.No.27 of 2012 on the file of the Court of the Special Judge, Special Court under TNPID Act, Coimbatore.

For Petitioner : Mr.S.Sheik Ismail  
For Respondent : Mr.S.Santhosh  
Government Advocate (Criminal Side)

**Crl.O.P.No.30700 of 2022:**

The State represented by  
The Inspector of Police,  
Economic Offence Wing,  
Namakkal District.

... Petitioner

Vs.



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1.Kongunadu Emu Poultry Farms Pvt. Ltd.,  
Karupanna Koil Thottam,  
Chinnu Nagar, Mohanoor Pradhana Salai,  
Near M.L.A. Office,  
Paramathivellore, Namakkal District.

2.P.Devaraj

3.R.Sathyaraj

4.N.Natarajan

5.M.Arivazhagan

... Respondents

**PRAYER:** This Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the common order dated 21.11.2022 in C.M.P.No.2139 of 2022 and C.M.P.No.2140 of 2022 in C.C.No.27 of 2022 on the file of the learned Special Court under TNPID Act, Coimbatore.

For Petitioner : Mr.S.Santhosh  
Government Advocate (Criminal Side)

For R-2 : Mr.S.Sheik Ismail

**COMMON ORDER**

The Criminal Original Petition in Crl.O.P.No.3203 of 2023 is filed to transfer the case in C.C.No.27 of 2012 on the file of the Court of the Special Judge, Special Court under TNPID Act, Coimbatore District to the file of any

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other competent Court having jurisdiction to try the same and consequently,  
direct the such transferee Court to dispose of the same.

2. The Criminal Original Petition in Crl.O.P.No.3123 of 2023 is filed to set aside the order passed in Crl.M.P.No.54 of 2023 dated 24.01.2023 in C.C.No.27 of 2012 on the file of the Court of the Special Judge, Special Court under TNPID Act, Coimbatore.

3. The Criminal Original Petition in Crl.O.P.No.30700 of 2022 is filed to set aside the common order dated 21.11.2022 in C.M.P.No.2139 of 2022 and C.M.P.No.2140 of 2022 in C.C.No.27 of 2022 on the file of the learned Special Court under TNPID Act, Coimbatore.

4. The learned counsel in Crl.O.P.No.3203 of 2023 and Crl.O.P.No.3123 of 2023 submitted that, the prosecution filed CMP.Nos.2139 and 2140 of 2022 seeking to recall PW509 for cross examination under Section 311 of Cr.P.C and to mark documents relating to registration of 1<sup>st</sup> accused company.



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5. Both the petitions were dismissed by learned Special Judge, Special Court under TNPID Act, Coimbatore on 21.11.2022. Thereafter, the prosecution filed Crl.M.P.No.54 of 2023 for examining Registrar of Companies for the purpose of marking the registration certificate of 1<sup>st</sup> accused company. This petition was allowed by learned Special Judge on 24.01.2023. Without even furnishing copies of documents sought to be marked i.e., registration certificate, the prosecution proceeded to examine Registrar of Companies as PW512 and marked Ex.P1652.

6. Though the petition was filed for marking only copies of the Registration certificate, prosecution marked Form A, Memorandum of registration, Articles of registration and Form 32 without any petition or permission. Petitioner was not informed about the documents to be marked before hand nor they were furnished copies of the documents. Therefore, it was informed to the Court that, they were not in a position to cross examine PW512. The accused prayed for adjournment for the purpose of cross examination.



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However, learned Judge did not grant an adjournment, but proceeded to state that "the time was 11.15 am and that the 1<sup>st</sup> accused company is a registered company and it has Directors, is admitted fact. Copies of the documents marked were furnished to the accused" and learned Judge directed the accused to cross examine PW512 before 5.45 pm. Since Advocates appearing for the accused were not ready for cross examination of PW512, for the reason that, they have to verify the documents, they reported that, they were not ready to cross examine the witnesses. Therefore, learned Judge closed the cross examination of witnesses on the same date i.e., 03.02.2023. Then the matter was adjourned to 06.02.2023 for argument.

7. It is the submission of learned counsel for the petitioner that, if a new witness is examined after the examination of witnesses is over, it is the duty of the Court to question the accused under Section 313 Cr.P.C with regard to the incriminating evidence found in the evidence of the new witness. Without following this procedure and without questioning the accused under Section 313 Cr.P.C on the evidence of PW512 and without giving an opportunity for the



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accused to produce defence witness, learned Judge posted the case for argument on 06.02.2023. Then on 06.02.2023, the learned Public Prosecutor commenced the argument for prosecution. It was brought to the notice of the learned Judge that, Section 313 CrPC proceeding was not done, with respect to the evidence of PW512. Then the learned Judge immediately questioned the accused under Section 313 Cr.P.C. Then, posted the matter for defense evidence on 08.02.2023. Accused filed 311 Cr.P.C petition for recalling PW512 along with petition under Section 245 Cr.P.C for examining defense witnesses.

8. It is submitted by the learned counsel for the petitioner that, Section 311 Cr.P.C petition was allowed by the learned Judge on 09.02.2023, with the condition to deposit Rs.2,000/- towards travelling allowance for PW512 and to pay costs of Rs.25,000/- to the District Legal Services Authority, Coimbatore. The condition to deposit Rs.2,000/- towards travelling allowance of PW512 and to pay Rs.25,000/- to District Legal Services is onerous condition. For the no fault of the petitioner, they were asked to pay this amount. He submitted that, had the accused been served with copies of the documents, going to be marked,



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through PW512, before his examination, he would have cross examined PW512 on the same date i.e., on 03.02.2023.

9. Learned counsel for the petitioner submitted that, 1<sup>st</sup> accused company had invested the deposited amount in purchasing the lands. The lands have been purchased in the name of Arivazhagan, who is the 3<sup>rd</sup> accused. The value of the lands is about Rs.10 crores now, whereas the liability of the accused is only Rs.6 crores. Petitioner has even informed the learned Judge that, the land may be sold and depositors may be settled their amount. In this regard, one depositor Chandrasekar filed W.P.No.23505 of 2021, seeking relief of selling the property of 1<sup>st</sup> accused company and for settling the depositors.

10. This Court passed an Order in W.P.No.23505 of 2021. It reads as follows,

*“11.This Court accepts the reason given by the respondents/competent authority. Due to the pandemic situation, the real value of the property could not be realized. Since there are 529 depositors and the cheated amount is to*



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*the tune of Rs.7,50,07,922/-, maximum to be retrieved from the property attached, so that the depositors can be repaid with the deposited/invested amount.*

*12.This Court is of the view that the attached property of five acres of land available enblock in Perundurai Taluk can be used for Government purpose. The competent authority/respondents can approach the Government through the concerned District Collector to find out whether Government needs such property. On exploring such possibility if lands are required, necessary steps shall be taken and proper value shall be fixed and the amount to be deposited to the credit of the bank account of the 2 nd respondent and thereafter, the amount shall be paid to the depositors. “*

11. Challenging this W.A.No.487 of 2022 was filed. The Hon'ble First Bench of this Court, on 07.12.2022 passed the following Order,

*“3. Considering the facts and circumstances of the matter, modifying the order of interim stay granted by this Court dated 08.03.2022, we hereby direct the respondents herein to take further steps to bring the property-in-question for public auction. Accordingly, two months time is granted to the*



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*respondent concerned to proceed with the public auction for the purpose of selling the property-in-question so as to realise the money for repayment of the same to the small time depositors.”*

12. When there is a possibility of settling the amount due to the depositors and the petitioner is prepared to settle the amount due to the depositors, the unnecessary hurry shown by the learned Judge in disposing the case, without giving sufficient opportunity is not appropriate. Therefore, Crl.O.P.No.3123 of 2023 is filed to set aside the Order passed in Crl.M.P.No.54 and 2023 and Crl.O.P.No.3203 of 2023 is filed to transfer the C.C.No.27 of 2022 on the file of the Court of the Special Judge, Special Court under TNPID Act, Coimbatore to the file of any other competent Court.

13. In reply, learned Government Advocate (Criminal side) submitted that, in view of the examination of PW512, there is no need for setting aside the order passed in C.M.P.Nos.2139 of 2022 and 2140 of 2022, for the reason that, the objection of proving that 1<sup>st</sup> accused is a registered company, was according to the prosecution, is over by the examination of PW512. So far as, examination of



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PW512 is concerned, he submitted that, the accused were furnished with copies of documents marked after the chief examination of PW512. However, they have not chosen to cross examine them. He further stated that, on instruction from the respondent police, that copies of the documents marked were served to the accused along with 311 Cr.P.C petition. So far as the claim of selling of accused' property for settling the depositors, separate proceedings has been taken by DRO. This fact was not brought to the notice of the learned trial Judge. In such circumstances, he submitted that the Order passed by learned Judge has to be confirmed and that transfer petition filed by the petitioner has to be dismissed.

14. Considered the rival submissions and perused the records.

15. It is not in dispute that, this case is pending from the year 2012. The prosecution has cited 539 witnesses. Out of 539 witnesses, prosecution has now examined 512 witnesses. Ofcourse, PW512 name is not shown as witness and the copy of the registration certificate of 1st accused company was not shown as a document. Only because, the accused raised an issue with regard to the



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registration of 1<sup>st</sup> accused company, it has become necessary for the prosecution to examine additional witness namely PW512 to mark the registration certificate of 1<sup>st</sup> accused along with other documents to establish the registration of 1<sup>st</sup> accused company. Though it is claimed by learned Government Advocate (Criminal side) that, the copies of the documents marked were supplied to the accused in advance along with the copy of the 311 Cr.P.C petition furnished to the accused, the adjudication of learned Special Judge in the deposition of PW512 does not reflect furnishing of the copies of the accused, prior to examination of PW512 on 03.02.2023. After the chief examination was over, when the accused were asked to cross examine PW512, it was brought to the notice of the learned Special Judge by the accused that, they were not furnished with copies of documents marked through PW512. Therefore, they are not in a position to cross examine him and prayed time for cross examination. Then only, it appears that copies of documents marked were supplied to the accused and then they were asked to cross examine before 5.45 pm. The accused were not prepared to cross examine, for the reason that, they have to get instructions from the parties and they cannot cross examine the witnesses off hand.

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16. It is seen from the adjudication dated 03.02.2023 that, after the examination of PW512, it appears that learned Special Judge has not chosen to examine the accused under Section 313 Cr.P.C, with regard to the incriminating evidence available in the evidence of PW512. Learned Special Judge has not even given an opportunity to the accused for producing defense witnesses. Without following these requirements prescribed under law, the case was straight away posted for arguments on 06.02.2023. The adjudication Order dated 06.02.2023 shows that, only on that date, accused were questioned under Section 313 Cr.P.C and then, the case was posted for defense witnesses, if any, as a last chance on 08.02.2023. It is not known as to why such an urgency is required in this case. Thereafter, petitioner filed 311 Cr.P.C petition for recalling PW512. As already stated, that petition was allowed, with condition to deposit Rs.2,000/- for travelling allowance of PW512 and to pay Rs.25,000/- to District Legal Services Authority, Coimbatore. Basically, the fault is with the Court by examining of PW512 without supplying the copies of documents to the accused before hand. Section 313 Cr.P.C. questioning was not done on the evidence of



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PW512 and no opportunity was given for defence evidence. The case was straight away adjourned for arguments after examining PW512.

17. No doubt that “Justice delayed is justice denied” and speedy justice is the need of the hour. But, at the same time, “Justice hurried is justice buried”. The Courts are expected to give reasonable time and opportunity to the accused to defend their case. Unfortunately, in this case, learned Judge had shown unnecessary urgency in examining PW512, without furnishing copies of documents to the accused and posted for further proceedings without following the procedure. At the same time, we have to consider one thing that this case is pending from the year 2012. More than 10 years had lapsed, since the filing of the case.

18. Taking into consideration and the above said aspects, this Court is of the view that,

(i) Petitioner in Crl.O.P.Nos.3203 and 3123 of 2023 should be given an



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opportunity to recall PW512, without payment of travel expenses of Rs.2,000/- to PW512 and payment of costs of Rs.25,000/- to the District Legal Service Authority, Coimbatore.

(ii) Petitioner in Crl.O.P.Nos.3203 and 3123 of 2023 should also be given an opportunity to examine defense witnesses.

(iii) This Court directs the learned Special Judge to give reasonable and fair opportunity to the accused in the matter of examination of witnesses, especially of PW512 and defense witnesses.

19. In this view of the matter,

(i) The Order passed in Crl.M.P.No.54 of 2023 is modified to the extent that PW512 to be recalled for the purpose of cross examination without insisting on payment of travel expenses and costs. Accordingly, Crl.O.P.No.3123 of 2023 is allowed:

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(ii) There is no need to transfer the C.C.No.27 of 2012 on the file of the learned Special Judge, Special Court under TNPID Act, Coimbatore to any other Court. Accordingly, Crl.O.P.No.3203 of 2023 is dismissed:

(iii) Crl.O.P.No.30700 of 2022 is also dismissed.

**14.02.2023**

Internet : Yes / No

Index : Yes / No

Speaking/Non speaking order

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To

1.The Special Judge, Special Court under TNPID Act, Coimbatore District.

2.The Inspector of Police,  
Economic Offence Wing,  
Namakkal District.

2.The Public Prosecutor,  
Madras High Court.

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**G.CHANDRASEKHARAN,J.**

gd

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