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CrI.O.P.No.6760 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

CrI.O.P.No.6760 of 2023

Rudravanniyan

... Petitioner

Vs.

State by
The Inspector of Police,
Vigilance and Anti Corruption Wing,
Cuddalore, Cuddalore District.
(Crime No.10 of 2019)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C.,
pleased to set aside the order passed by the learned Chief Judicial Magistrate /
Special Judge, Cuddalore, Cuddalore District made in CrI.M.P.No.559 of 2023
in Spl.Case No.20 of 2020 dated 15.02.2023, dismissing the petition filed by
the petitioner herein under Section 311 Cr.P.C.

For Petitioner : Mr.K.Suresh Babu for S.Marimuthu

For Respondent : Mr.N.S.Suganthan,
Government Advocate (CrI. Side)



CrI.O.P.No.6760 of 2023

ORDER

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2. The petitioner/A3 is facing trial in Spl.Case No.20 of 2020 on the file of the Chief Judicial Magistrate / Special Judge, Cuddalore, Cuddalore District for the offences punishable under Sections 7, 12 read with 7 of the Prevention of Corruption Act, 1988 as amended by the Prevention of Corruption (Amendment) Act, 2018. He is alleged to have received bribe amount at the time of trap on behalf of the Government Servants. During trial, when PW2 was examined on 1.7.2022, it appears that the petitioner had filed an Application seeking to recall him for cross examination, contending that since petitioner did not engage a counsel by then, he was unable to examine the witness on 1.07.2022 and thereby he had to file the Application under Section 311 of Cr.P.C. on 12.01.2023, which came to be dismissed by the Trial Judge.

3. While admitting that there are some lapses on the part of the



Crl.O.P.No.6760 of 2023

petitioner, learned counsel for the petitioner would submit that to establish the case of the defence, one more opportunity may be provided to recall and cross examine PW2. He would also submit that as on date, the case stands posted for examination of PW8 and in such circumstances, if the court grants an accommodation, the petitioner would cross examine PW2 on a date to be fixed, without fail

4. Mr.N.S.Suganthan, Government Advocate (Criminal Side) would submit that recall of witness cannot be allowed for change of counsel or for not engaging a counsel and despite sufficient opportunity, the petitioner has failed to cross-examine the witness and the trial cannot be allowed to be protracted under the guise of recalling the witnesses, however, if the court is inclined to permit the petitioner to recall the witness for cross-examination, it may be on fixing of terms and cost and the petitioner may be directed to cross-examine the witness on the day of her appearance. He would, on instructions, submit that the respondent would be able to produce the witness PW2 before the court on 10.4.2023.

5. Heard, the learned counsel and perused the materials available on record.



6. On the issue in question, the Apex Court has held in ***Vinod Kumar vs. State of Punjab*** (2015) 3 SCC 220, held that calling of a witness for cross-examination after a long span of time is anathema to the concept of proper and fair trial.

7. In the case on hand, considering the records and the submissions made by the learned counsel for the parties, this Court finds no infirmity or error in the order passed by the Trial Judge, however, in order to provide an opportunity to the petitioner to establish his defence, this court is inclined to set aside the order in Crl.M.P.No.559 of 2022 dated 15.02.2023 and grant one final opportunity to the petitioner on the following conditions:-

i) The Trial Court shall recall the witness on a condition that the petitioner shall deposit a sum of Rs.5000/- before the Trial Court on or before 6.4.2023.

ii) The petitioner shall also file an Affidavit of Undertaking that he will cross-examine the witness PW2 when she is produced on 10.4.2023.

iii) In the event of the petitioner failing to cross-examine the witness on the same day of her production before the court, he shall lose the opportunity of recalling her again.

iv) The Trial Court shall disburse the amount of Rs.5000/- deposited by the petitioner to the witness on the day of her appearance in court.



CrI.O.P.No.6760 of 2023

8. The Criminal Original Petition is ordered accordingly.

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Internet : Yes / No
mpa.

To

- 1.The Chief Judicial Magistrate / Special Judge,
Cuddalore, Cuddalore District.
- 2.The Inspector of Police,
Vigilance and Anti Corruption Wing,
Cuddalore, Cuddalore District.
- 3.The Public Prosecutor,
Madras High Court.



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Crl.O.P.No.6760 of 2023

A.D.JAGADISH CHANDRA.,J

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Crl.O.P.No.6760 of 2023

31.03.2023