



Crl.O.P.No.7440 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.7440 of 2023

and

Crl.M.P.No.4750 of 2023

1. Pradeep M Shah

2. N.K.Mohent

... Petitioners

/vs/

The Inspector of Police,
Central Crime Branch,
Chennai – 600 007.

... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to eschew the Evidence of PW7 in so far as Ex.P16 and Ex.P19 are concerned and reject the Ex.P16, Ex.P19 as inadmissible, in C.C.No.25 of 2013 on the file of the Special Metropolitan Magistrate -I, Special Metropolitan Magistrate -I, Special Court for Exclusive Trial of Land Grabbing Cases, Allikulam, Chennai.

For Petitioner

... Mr.K.M.Subhramaniam

For Respondents

... Mr.S.Santhosh (For R1 & R2)
Government Advocate (crl.side)



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ORDER

This Criminal Original Petition has been filed to eschew the Evidence of PW7 in so far as Ex.P16 and Ex.P19 are concerned and reject the Ex.P16, Ex.P19 as inadmissible, in C.C.No.25 of 2013 on the file of the Special Metropolitan Magistrate -I, Special Court for Exclusive Trial of Land Grabbing Cases, Allikulam, Chennai.

2. The learned counsel for the petitioner submitted that, petitioners are accused in C.C.No.25 of 2013 pending on the file of Special Metropolitan Magistrate -I, Special Court for Exclusive Trial of Land Grabbing Cases, Allikulam, Chennai. When PW7/Investigation Officer was examined on 23.03.2023, the learned trial Judge has permitted marking of statements recorded under Section 161 of Cr.P.C., from two witnesses namely P.N.Subramaniam and Gajalakshmi. The statements were given marking as Ex.P16 and Ex.P19. He further submitted that, statements given by the witnesses under Section 161 of Cr.P.C can be used only for the purpose of contradicting the maker of the statements, if he is examined as witness. The aforesaid witnesses are dead and therefore, they could not be examined. When witnesses are not examined, it is



impermissible and illegal to mark their statement through Investigating Officer /PW7.

3. The learned Government Advocate (Crl. Side) concedes that, the statement under Section 161 of Cr.P.C is not substantive evidence.

4. Considered the rival submissions and perused the records. It is seen from the deposition of PW7 that, when PW7 was examined, entire statement of Witness P.N.Subramanaian was reproduced and marked as Ex.P.16. Similarly, statement of Gajalakshmi was reproduced and marked as Ex.P.19. As mentioned earlier, statements given by the witnesses under Section 161 of Cr.P.C can be used only for the purpose of contradicting the maker of the statements.

5. Therefore, this Court is of the view that, marking of statements of witnesses given under Section 161 of Cr.P.C during examination of PW7/Investigating Officer, is illegal and impermissible.



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6. Accordingly, this Criminal Original Petition is allowed. The evidence of P.W.17 in para (5) and (10) is ordered to be eschewed.

Consequently, connected miscellaneous petition is closed.

24.04.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non speaking order
Sma

To

1. Special Metropolitan Magistrate -I,
Special Court for Exclusive Trial of Land Grabbing Cases, Allikulam,
Chennai.
2. The Inspector of Police,
Central Crime Branch,
Chennai – 600 007.
3. The Public Prosecutor,
High Court, Madras.



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G.CHANDRASEKHARAN, J.

Sma

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