



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.6.2023

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Original Petition No.8971 of 2023
and
Crl.M.P.No.5752 of 2023

Anwar Hussain

Petitioner

vs.

State rep. by
Deputy Superintendent of Police,
CBI/ACB, Chennai.

Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to st
aside the order passed in Crl.M.P.No.2605 of 2023 date 21.3.2023 in
C.C.No.36 of 2011 on the file of the Principal Special Judge for CBI
Cases, VIII Additional City Civil Court, Chennai.

For Petitioner : Mr.B.Kumar, Senior Counsel for
Mr.Vasa Lohith Kumar Prithvi

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI Cases

ORDER

The present petition has been filed by the petitioner, who has
been arrayed as A2 in C.C.No.36 of 2011 on the file of the Principal



Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai
praying to set aside the order passed in CrI.M.P.No.2605 of 2023 date
21.3.2023.

2. Factual aspects leading to filing of the present petition are as
under:-

i) The petitioner has been arrayed as A2 in C.C.No.36 of 2011 on
the file of the Principal Special Judge for CBI Cases, VIII Additional City
Civil Court, Chennai for the offences punishable under Sections
24(1)(c) and 24(1)(g) of Emigration Act, 1983, based on the Sanction
Order dated 8.4.2021 issued by the Protector of Emigrants.

ii) Charge sheet was filed by the respondent-CBI before the Trial
Court on 6.7.2011 against 15 accused.

iii) During the course of trial, the prosecution had examined 81
witnesses and marked 198 documents.

iv) Whiles, a petition under Section 311 Cr.P.C. came to be filed
by A1 and A2 on 14.3.2023 to recall the witnesses P.Ws.3, 11, 21, 40
and 73 contending that certain important aspects have to be clarified
from the said witnesses for arriving at a fair and just conclusion and to
rebut the evidence brought on record against A1 and A2.



v) The Trial Court, while entertaining the prayer of the petitioners to recall P.Ws.11, 21, 40 and 73, had rejected the same insofar as PW3 is concerned holding that recalling of PW3 for cross examination is not essential. Aggrieved against the order passed by the Trial Court rejecting the prayer insofar as PW3 is concerned, the present petition has been filed by A2 alone.

3. The crux of the submissions made by the learned Senior Counsel Mr.B.Kumar, appearing for the petitioner is as under:-

i) The entire case in C.C.No.36 of 2011 has been proceeded on a basic premise that the petitioner/A2 had contravened the provisions of Emigration Act, 1983 and the implication of the petitioner/A2 in C.C.No.36 of 2011 is based upon the Sanction Order dated 18.4.2011 issued only by PW3 in his official capacity as Protector of Emigrants, in terms of Section 27 of the Emigration Act, 1983 for offences punishable under Sections 24(1)(c) and (g) of the Emigration Act, 1983. Therefore, proper examination of PW3 is vital and significant for the entire case.

ii) Neither in the chief examination nor in the cross examination, any conclusive statement was made by PW3 as to whether the



petitioner/A2 had contravened the provisions of Emigration Act, 1983 and in fact, no such a case has been registered against the petitioner/A2 for contravention of the provisions of the Emigration Act, 1983. Therefore, the sanction accorded in terms of Section 27 of the Emigration Act, 1983 is not only bad in the eye of law but also illegal and unsustainable to prosecute the petitioner/A2.

iii) Mere procedural approval in the form of sanction would not validate the commission of crime and the element of conspiracy. Factual clarity in this aspect could be spoken only by PW3.

iv) The fundamental right available to the petitioner to establish the truth and to bring out clarity needs to be protected by this court since the personal liberty and peaceful life of the petitioner/A2 is at stake and thereby, recalling of PW3 has become inevitable.

iv) The reasons assigned in the order passed by the Trial Court rejecting the prayer of the petitioner to recall the witnesses insofar as PW3 is concerned, are not good in law. The importance of recalling PW3 and proper examination has not been appreciated in the order passed by the Trial Court and the order has been passed in a mechanical manner and thereby, it warrants interference by this court.



4. Learned Special Public Prosecutor, Mr.K.Srinivasan appearing for the respondent-CBI would submit that the Trial Court had rightly considered the scope of Section 311 petition and having found that the witness was nearing the age of 70 and he was already cross-examined substantially, his further cross-examination by recalling is not essential, however, still, the petitioner is harping on the issue only to drag on the proceedings. He would further submit that de hors the merits of the petition filed by the petitioner/A2, the circumstances for recalling the witness are not feasible considering the health condition of the witness. By producing a verbatim script of the message conveyed by the witness and the copies of supporting medical prescriptions, he would submit that the witness had expressed his inability to appear in person to adduce evidence remembering about the details of the case due to his ill health condition and old age.

5. Heard the learned counsel appearing for the parties and perused the materials available on record.

6. The petitioner seeks for recalling of an official witness, who had accorded sanction for implicating the petitioner as accused in the



Criminal Proceedings. The Criminal Proceedings before the Trial Court is of the year 2011. Now, it is reported that the case stands posted for arguments after closure of evidence. Now, at the 11th hour, the petitioner has come out with a petition to recall certain witnesses. Still, the Trial Court has entertained the plea, however, restricting the relief to other witnesses sought to be recalled, while rejecting it insofar as PW3 is concerned considering his old age and the nature of evidence he had adduced and the extensive cross examination.

7. In ***Vinod Kumar vs. State of Punjab*** (2015) 3 SCC 220, the Apex Court, deprecating the long delay of about a year and 8 months that had taken place in the cross examination of a witness, has observed as under:-

"**57.4.** In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is



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inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial."

8. In ***Swapan Kumar Chatterjee vs. Central Bureau of Investigation*** (2019) 14 SCC 328, the Hon'ble Supreme Court has held as under:-

"**11.** It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.



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12. Where the 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 to the accused and should not be allowed."

9. In the case on hand, there is not only a long delay in seeking recall of a witness for cross-examination. It is also brought to the notice of the court that the witness sought to be recalled is a retired Government Official aged about 70 years and struggling with many ailments. The communication sent by the witness is reproduced for ready reference:-

"Good Evening Mr Alexander. I saw your massage today only. Infact I retired more than 10 years back. I am 70+ now n suffering from many ailments. Post my heart attack, I underwent ballooning n stenting n besides regular check ups presently I am on cardiac medicines. I am also suffering from BP. enlargement of prostate. post Herpes numbness in left leg, anxiety, depression n



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loss of memory. As I am also suffering from Cervical Spondylitis. sometimes I feel giddiness while getting up. As per prescription from CGHS Specialist Wing. Safdarjung Hospital, New Delhi, enclosed herewith, I am taking more than a dozen pills everyday for the past several years. So far as this case is concerned, I don't remember the details of the case now. Otherwise also as advised by the Consultant Psychiatrist, I am taking some neuro medicines prescribed by him for the past several years. I would therefore request you to kindly request the Hon'ble Court to excuse me from personal appearance as I may not be able to help the Hon'ble Court in imparting justice in the present case. Thanks n regards. Dr Vinay Sahni."

10. The above communication alongwith the supporting documents sent by the witness speaks much about the health condition of the witness, his inability to appear in person for cross examination and to adduce evidence by recollecting the events that



had taken place long back that too at his old age amidst the administration of various medicines for his various ailments.

11. With regard to the the merits of the petition, on a perusal of the order passed by the Trial Court, it is seen that no specific reason had been assigned by the petitioner for recalling the witness and the submission made by the learned counsel appearing for either side revealed that the petitioner intends to prove that the Sanction Order Ex.P6 was issued by the witness, PW3 without perusing any document and without application of mind, by eliciting specific answer from the witness as to what are all the documents, he had perused before issuing the Sanction Order.

12. The further observation made by the Trial Court reveals that at the first instance itself, when the witness was posed with a question as to whether his perusal of FIR and statement of witnesses, as stated by him, in his chief examination, finds a place in Ex.P6, has given an answer that there is no habit of mentioning the entire records perused and whatever, he had seen, he had stated in para 3 of Ex.P6. Analysing the evidence already given by the witness and the scope of



the petition filed to recall the witness, especially, in view of the old age of the witness, the Trial Court has observed that the validity of the Sanction Order issued by the said witness viz., PW3 can be considered while disposing the main case itself.

13. Therefore, considering the totality of the circumstances, this court is of the view that there is no infirmity or illegality in the order passed by the Trial Court and thereby the present Criminal Original Petition is liable to be dismissed. Accordingly, it is dismissed. Consequently the connected Miscellaneous Petition is also dismissed.

22.6.2023.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. Principal Special Judge for
CBI Cases,
VIII Additional City Civil Court,
Chennai.
2. Deputy Superintendent of Police,
CBI/ACB, Chennai.
3. Special Public Prosecutor
for CBI Cases,
High Court, Madras.



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A.D.JAGADISH CHANDIRA, J.

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