



Crl.R.C.No.769 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.769 OF 2023 &
Crl.MP.No.5936 of 2023

Shamsheer

.. Petitioner

Vs

The State, represented by
the Inspector of Police,
NIB-CID, Chennai

... Respondent

Prayer: Criminal Revision Case filed under section 397 r/w.401 Cr.P.C. to call for the records and set aside the order dated 18.04.2023 in Crl.M.P.No.2603 of 2023 passed by the II Additional Sessions Judge, Special Court for NDPS Act cases at Chennai in C.C.No.131 of 2021, pending trial before the II Additional Sessions Judge, Special Court for NDPS Act Cases at Chennai.

For Petitioner : Mr. R. Vivekananthan

For Respondent : Mr. R. Vinothraja, GA (crl.side)

ORDER



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This Criminal Revision case has been filed challenging the order of dismissal dated 18.04.2023 passed by the II Additional Sessions Judge, Special Court for NDPS Act Cases at Chennai in Cr.M.P.No.2603 of 2023 in C.C.No.131 of 2021, filed under section 242(3) of Cr.P.C., to defer the cross examination of PW2 till the examination of LW2 and LW3.

2. The learned counsel for the petitioner submitted that the petitioner is a third accused in C.C.No.131 of 2021 on the file of II Addl. Sessions Judge, Special Court for NDPS Act Cases at Chennai. The respondent police has registered a case in Cr.No.31 of 2020 for the offence under sections 8(c) r/w.20(b)(ii)(c), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985 against the petitioner/accused along with other three accused and final report has been filed for the offences punishable under sections 8(c) r/w.20(b)(ii)(c), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act 1985. On filing of final report, charges have been framed. On 14.3.2022. the petitioner filed a memo informing the court to examine the listed witnesses



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viz., LW1 to LW5 together on the same day for the purpose of cross examination of all the witnesses simultaneously. In spite of that information, the learned Judge examined LW1 as PW2 on 29.03.2023 and posted the case on 12.04.2023 for cross examination of PW2. He further submitted that LWs.1, 2, 3 are speaking about the same set of facts of arrest and seizure of the contraband. Therefore, they have to be cross examined at the same time in order to put their defense effectively. But, the trial court denied that right to the petitioner and dismissed his petition filed under section 242(3) of Cr.P.C., for deferring the cross examination of PW2 till the examination of LW2 and LW3. Aggrieved against the same, the present criminal revision case is filed.

3. He further submitted that since PW2, LW2 and LW3 speak about the same set of facts, the defense taken by the petitioner would be revealed if PW2, LW2 and LW3 are cross examined simultaneously. Therefore the cross examination of PW2 has to be deferred till LW2 and LW3 are examined by the prosecution and thereafter the petitioner may be permitted to cross examine PW2, LW2 and LW3 on the same day itself.



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4. The learned Govt. Advocate (crl.side) submitted that LW1 is a Forensic Officer and he was chiefly examined as PW2. LW1, 2 and 3 are speaking about the arrest and seizure of the contraband .

5. Heard both sides and perused the impugned order and the materials available on record.

6. On perusal of records, the fact reveals that the petitioner along with three accused were facing trial for the offences under sections 8(c) r/w.20(b)(ii)(c), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act 1985. On 14.3.2022, the petitioner filed a memo in Crl.M.P.No.2603 of 2023 seeking the court to examine LW1 to LW5 together on the same day for the purpose of cross examination of all the witnesses simultaneously. The trial Judge dismissed the petition on the ground that in the NDPS cases, almost all the witnesses will be official witnesses, wherein, their roles are interlinked with each other in the process of search, seizure, arrest and investigation, as such, the reason stated by the petitioner is unsustainable,



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7. It is true that LW1 (PW2) and LW2 and LW3 have spoken about the arrest and seizure of the contraband from the accused persons. Even though the petitioner filed a memo informing the court about his intention to cross examine LWs1 to 3 simultaneously, the trial court examined PW2 alone. Hence, he filed a petition under section 242 Cr.P.C., for deferring the cross examination of PW2, but the same was dismissed. This court is of the view that since the witnesses are speaking about the arrest and seizure, they have to be cross examined simultaneously, enabling the accused persons to cross examine them on the same day itself, for ensuring fair trial. In this case, LW1 (PW2) alone was examined in chief and remaining LW2 and LW3 are not yet examined. Therefore, the trial court is directed to defer the cross examination of PW2 till the examination of LW2 and LW3.

8. In the result,

- The Criminal Revision Case is allowed and the impugned order dated 18.04.2023 passed in Crl.M.P.No.2603 of 2023 in C.C.No.131 of 2021 by the trial court is hereby set aside. Consequently, the connected



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miscellaneous petition is closed.

- The cross examination of PW2 (LW1) is deferred till the examination of other witnesses viz., LW2 and LW3.
- The trial court is directed to examine LW2 and LW3 simultaneously and produce PW2 on the same day and let the petitioner to cross examine PW2, LW2 and LW3 on that day itself.
- It is made clear that the petitioner shall cross examine the abovesaid witnesses on the same day itself without getting any further adjournments.

25.04.2023

msr

Index: yes/no

Internet:yes/no

To

1. The II Addl. Sessions Judge,
Special Court for NDPS Act Cases,
Chennai.

2.The Inspector of Police,

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NIB CID, Chennai.
3. The Public Prosecutor,
Madras High Court.

V. SIVAGNANAM, J.

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25.04.2023