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Crl.O.P.No.21163 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.09.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.21163 of 2023

G.Ramakrishnan

.. Petitioner

Vs.

State by
The Inspector of Police,
Vigilance and Anti Corruption Wing,
Nagapattinam.
[Crime No.5 of 2013]

..Respondent

PRAYER : Criminal Original Petition has been filed under section 482 of Criminal Procedure Code to set aside the order passed in C.M.P.No.691 of 2023 in Spl.C.C.No.3 of 2015 on the file of the Chief Judicial Magistrate, Tiruvarur, dated 29.08.2023.

For Petitioner	:	Mr.B.Kumarasamy
For Respondent	:	Mr.S.Udaya Kumar
		Government Advocate (Crl.Side)

ORDER

The petitioner herein facing trial for the alleged demand of Rs.1,000/- and receipt of same on 26.07.2013 as illegal gratification, when the defacto



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complainant sought financial assistance under the scheme of Farmer Protection for his son's marriage.

2. The prosecution, on completion of investigation, has filed a final report and examination of witnesses was commenced on 11.04.2017. The prosecution has closed their side of examining the witnesses. After completing the examination of Investigating Officer as PW.8, on 04.07.2023, the trial Court has adjourned the matter for questioning under Section 313 of Cr.P.C., regarding incriminating evidence against the accused. Thereafter, the petitioner/accused has filed an application under Section 311 of Cr.P.C, on 01.08.2023. After considering the contention raised by the petitioner and the public prosecutor, the trial Court has dismissed the petition to recall the witnesses PW.1, PW.2, PW.3 , PW.7 and PW.8 on the ground that it is a dilative tactics adopted by the petitioner herein to protract the proceedings. Having cross examined his witnesses in depth, the petition to recall without assigning any reason been filed and recalling the witnesses is not the matter of right, but it must be supported by reasoning that failure of justice will occur if the witness/es not recalled.



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3. Being aggrieved, the present Criminal Original Petition is filed by the petitioner.

4. The learned counsel appearing for the petitioner submitted that initially the case was tried before the Chief Judicial Magistrate, Nagapattinam, later transferred to Tiruvarur on bifurcation of district that is the reason why there was delay in examining the witnesses. Though PW.1 was examined as early as on 11.04.2017, the rest of the witnesses were examined only after transfer of the case to Tiruvarur Court. Soon after, on completion of examining the witnesses on the side of the prosecution, application to recall five witnesses filed stating that the accused has to establish through these witnesses that he was discharging his official duty involving recovery of money under RR Act and therefore, these witnesses PW.1, PW.2, PW.3, PW.7 and PW.8 are to be recalled and cross examined further in the interest of justice.

5. Per contra, the learned Government Advocate (Crl.Side) appearing for the State submitted that the petition to recall five witnesses is bereft of reasoning. More so, in the light of the fact that all these witnesses were cross



examined by the accused in depth at length, there is no indication in the application that further examination of these witnesses will throws light to arrive at just conclusion.

6. The learned counsel appearing for the petitioner relies upon the following judgments:-

(i). *Ratanlal -Vs- Prahlad Jat & others* reported in *2018 AIAR (Criminal) 62*.

(ii). *The State Rep. by the Deputy Superintendent of Police -Vs- Tr.N.Seenivasagan* reported in *2021 SAR (Cri) 407*.

(iii). *V.N.Patil -Vs- K.Niranjana Kumar & others* reported in *2021 SAR (Cri) 396*.

7. On perusing the facts of the case in three judgments, this Court finds that, in *Ratanlal -Vs- Prahlad Jat & others* reported in *2018 AIAR (Criminal) 62*, as a case where the Hon'ble Supreme Court declined to entertain the petition filed by PW.4 and PW.5 to recall them and deposed contrarily to their earlier testimony. In this judgment, the Hon'ble Supreme Court has



observed that after supporting the case of the prosecution, eight months later the witnesses themselves have come forward to file a petition under Section 311 of Cr.P.C., stating that they were forced by the prosecution to depose in their favour.

8. The trial Court has observed that, after passage of 8 months the witnesses on their own will and volition filed application for their re-examination on the ground that the statements made by them earlier were under pressure. They have not assigned any reason for the delay in making application. From this, it is obvious that they have been ran over. In ***the State Rep. by the Deputy Superintendent of Police -Vs- Tr.N.Seenivasagan*** the Hon'ble Supreme Court had an occasion to consider the scope and ambit of Section 311 of Cr.P.C., and has observed that the application to recall P.W.1 and P.W.11 to mark the proceedings relating to grant of sanction, which was not placed by the prosecution ought to be allowed to satisfy the Court for just decision of the case.

9. In the case cited supra, a pertinent question whether the sanction under Section 19 of P.C.Act, to prosecute the accused was accorded by the



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Board of TANGEDCO or by the Chairman of TANGEDCO was the question in dispute. Therefore, for the Court to arrive at just decision, whether the sanction was accorded in terms of provision of law, allowed the petition under Section 311 of Cr.P.C., to recall the witness namely PW.1, the sanctioning authority and PW.11, the Investigating Officer.

10. The third case cited by the learned counsel for the petitioner that, ***V.N.Patil -Vs- K.Niranjana Kumar & others reported in 2021 SAR (Cri) 396***. In this case, there was two postmortem report and the second postmortem report was not produced by the prosecution. Having come to know about the second postmortem report, the accused wanted to recall the witness under Section 311 Cr.P.C., and elucidated the information regarding the second postmortem. Considering the fact of the case, the Hon'ble Supreme Court has held that the background of the case in hand, warrants recall of witness. The earlier judgment of the Court relied to Section 311 Cr.P.C., is rightly discussed in ***V.N.Patil -Vs- K.Niranjana Kumar & others reported in 2021 SAR (Cri) 396***, the Hon'ble Supreme Court has distinguished when this provision can be exercised and when it should be declined.



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11. In the case in hand, the deposition copy of the witnesses PW.1, PW.2, PW.3, PW.7 and PW.8 is enclosed. This Court finds these witnesses been cross examined at length. PW.1 is the Sanctioning Authority, PW.2 is the defacto complainant, PW.3 is the shadow witness, who accompanied with the defacto complainant during the trap. PW.7 is the Inspector of Police, who registered a complaint. PW.8 is the Investigating Officer, who has investigated the case and filed final report. All these witnesses been cross examined at length and in the application to recall these witnesses, there is no whisper about for what purpose they have to be recalled and examine further.

12. The learned counsel appearing for the petitioner submitted that the accused cannot disclose his line of cross examination except stating that to disprove the receipt of the illegal gratification, this witnesses are to be recalled for further examination.

13. This Court is unable to countenance his submission, no doubt the accused has right of silence and keep his defence closed to his chest till the cross examination of witnesses, but once the witness mounted in the witness



box and left in the hands of defence counsel for cross examination, it is right and duty of the accused to put the questions which he feels relevant and necessary. He can not reserve few questions for later point of time and file a petition under Section 311 Cr.P.C., without assigning any reason, which is the required ingredient under Section 311 of Cr.P.C.

14. The Hon'ble Supreme Court had dealt at length the scope of Section 311 of Cr.P.C., in *V.N.Patel -vs- K.Niranjan Kumar and others cited supra* and for completion and to buttress the decision of the Court, the same is extracted below:-

“14. The scope of Section 311 CrPC which is relevant for the present purpose is reproduced hereunder:

“311.Power to summon material witness, or examine person present.—Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”



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15. The object underlying Section 311 CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said “wider the power, greater is the necessity of caution while exercise of judicious discretion”.

16. The principles related to the exercise of the power under Section 311 CrPC have been well settled by this Court in Vijay Kumar v. State of U.P. [Vijay Kumar v. State of U.P., (2011) 8 SCC 136 : (2011) 3 SCC (Cri) 371 : (2012) 1 SCC (L&S) 240] : (SCC p. 141, para 17)

“17. Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of the Code and the principles of criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously.



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Before directing the learned Special Judge to examine Smt Ruchi Saxena as a court witness, the High Court did not examine the reasons assigned by the learned Special Judge as to why it was not necessary to examine her as a court witness and has given the impugned direction without assigning any reason.”

17. This principle has been further reiterated in Mannan Shaikh v. State of W.B. [Mannan Shaikh v. State of W.B., (2014) 13 SCC 59 : (2014) 5 SCC (Cri) 547] and thereafter in Ratanlal v. Prahlad Jat [Ratanlal v. Prahlad Jat, (2017) 9 SCC 340 : (2017) 3 SCC (Cri) 729] and Swapan Kumar Chatterjee v. CBI [Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839] . The relevant paragraphs of Swapan Kumar Chatterjee [Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839] are as under: (Swapan Kumar Chatterjee case [Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839] , SCC p. 331, paras 10-11)

“10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an



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obligation on the court (i) to summon and examine, or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

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.”

18. The aim of every court is to discover the truth. Section 311 CrPC is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under Section 311 CrPC has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice.”

15. Thus, it is undoubtedly clear that, the petitioner, who had already exercised and exhausted his right of cross examining the witnesses, if unable to place before the Court that for a particular reason, truth could not be unearthed



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and same has to be done for further examination of witnesses, the discretionary power under Section 311 Cr.P.C., cannot be exercised un judiciously. If the application to recall witnesses is bereft of necessary details, such applications ought to be dismissed.

16. In the case in hand, reason to recall not made out, hence this Court finds no error in the order of the trial Court dismissing the petition to recall. In the result, Criminal Original Petition is dismissed.

14.09.2023

Internet : Yes/No
Index : Yes/No

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To

1.The Chief Judicial Magistrate, Tiruvarur.

2.The Inspector of Police,
Vigilance and Anti Corruption Wing,
Nagapattinam.

3.The Pubic Prosecutor,
High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN, J.

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