



Crl.O.P.Nos.23779 and 23780 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.10.2023

CORAM:

THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos. 23779 and 23780 of 2023

and

Crl.M.P.No. 16521 of 2023

K. Sivamani

... Petitioner in both Crl. O.Ps.

vs

State represented by its
The Inspector of Police,
Vigilance and Anti-Corruption,
Head Quarters,
Chennai-600 028.

... Respondent in both Crl. O.Ps.

PRAYER in Crl.O.P.No.23779 of 2023: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to set aside the order made in Crl. M.P. No.540 of 2023 in C.C.No.06 of 2016 dated 20.09.2023 on the file of the Special Court for cases under the Prevention of Corruption Act at Chennai and recall the PW1 for further cross examination.



PRAYER in Crl.O.P.No.23780 of 2023: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to set aside the order made in Crl. M.P. No.893 of 2023 in C.C.No.06 of 2016 dated 20.09.2023 on the file of the Special Court for cases under the Prevention of Corruption Act at Chennai.

For Petitioner : Mr. Pachiyappan

For Respondent : Mr. C.E. Pratap,
Government Advocate (Criminal side).

COMMON ORDER

These criminal original petitions have been filed challenging the orders passed by The Special Judge, Special Court for cases under the Prevention of Corruption Act, Chennai, thereby dismissed the applications filed by the petitioner to recall PW1 in Crl. M.P. No.540 of 2023 and to recall PW32 and PW33 in Crl. M.P. No.893 of 2023 in C.C. No.6 of 2016 on the file of the trial Court.

2. Heard Mr. Pachiyappan, learned counsel appearing for the petitioner and Mr. C.E. Pratap, learned Government Advocate (Crl. Side) appearing for the respondent.



3. There are totally 6 accused and they are charged for the offences under Sections 13(1)(d), 13(2) of Prevention of Corruption Act r/w Section 109 of IPC. The prosecution had examined 32 witnesses and marked 54 documents. The evidence on the side of prosecution was closed in the month of March 2023. After questioning the accused U/s.313 of Cr.P.C and at the stage of hearing the arguments, petitioner had filed petition in Crl. M.P. No.540 of 2023 and Crl. M.P. No.893 of 2023 to recall PW1, PW31 and PW32, however, both the petitions were dismissed by the trial Court.

4. It is seen that, PW1 is the sanctioning authority. During his cross examination, he did not bring the entire file pertaining to the issuance of the sanction order passed by him. He also did not bring the final report along with him. The first Investigating Officer, who was examined as PW31, during his cross examination, has admitted that after completion of the entire investigation, he found that no case was made out as against the petitioner and hence he had sent draft final report on 27.10.2015 to the Directorate of Vigilance and Anti-Corruption to drop the further proceedings against the petitioner. Thereafter, without satisfying with the said final order, an another Investigating Officer was appointed and he was examined as PW32.



He also deposed in his cross examination that he had sent a draft final report dated 07.03.2016 by stating that the petitioner had not committed any offence and in fact, he only recommended to initiate departmental action against the petitioner herein for certain procedural lapses and for the offence committed by him. However, due to pressure from certain officials in the Directorate of Vigilance and Anti-Corruption, charge sheet had been laid against the petitioner and others after obtaining a Sanction Order from PW1. The order of Sanction was marked as Ex.P.1. Therefore, there are two draft final reports filed by the Investigating Officers, which are relevant to the petitioner. After examination of PW1, Investigating Officers namely PW31 and PW32 were examined. They had also admitted that they had submitted the draft final reports to drop the entire proceedings as against the petitioner and also recommended for initiating departmental action only for certain procedural lapses committed by the petitioner. That apart, prosecution has closed its evidence only in the month of March 2023. Though the application under Section 311 of Cr.P.C was filed in the vague end of the trial, the application for recalling the witnesses can be invoked at any point of time before the judgment.



5. It is relevant to extract the provision under Section 311 of Cr.P.C.

“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 such person if his evidence appears to it to be essential to the just decision of the case”

6. The **Hon'ble Supreme Court of India** in a case of **Manju Devi Vs. The State of Rajasthan** in Criminal Appeal No.688 of 2019 held that, discretionary powers like those under Section 311 of Cr.P.C., are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear and ambiguity in so far as the evidence is concerned as also to ensure that no prejudice is caused to anyone.

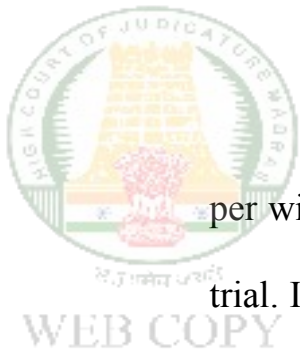
7. Therefore, provision under Section 311 of Cr.P.C., gives discretion to the Court to examine the witness at any stage. The mandatory provision which compels the Court to examine the witness, if the evidence appears to



the just decision of the Court. Though, the discretion given to the Court is very wide, the very width requires a corresponding caution. Therefore, in the case on hand, as stated supra, PW31, and PW32 categorically deposed that they filed final report as against the petitioner and also recommended for departmental proceedings. Petitioner had no opportunity to cross examine the sanction authority namely PW1 in this regard. Therefore, the trial Court ought to have allowed the petition filed by the petitioner under Section 311 of Cr.P.C., filed by the petitioner to cross-examine PW1, PW31 & PW32.

8. In view of the above discussions, this Court set asides the order passed by the learned Special Judge, Special Court for cases under the Prevention of Corruption Act at Chennai in Crl.M.P.No. 893 of 2023 and Crl.M.P.No.540 of 2023.

9. Accordingly, these Criminal Original Petitions are allowed. Further, the learned Special Judge, Special Court for cases under the Prevention of Corruption Act at Chennai is directed to permit the petitioner to Cross Examine PW1, PW32 and PW33 on the dates fixed by the trial Court. Petitioner should be given opportunity of cross-examining per day



per witness namely PW1, PW31 and PW32 and thereafter proceed with the trial. If the petitioner failed to cross examine PW1, PW31 and PW32 on the dates fixed by the trial Court, trial Court is directed to proceed with the trial in accordance with law. Consequently, the connected miscellaneous petition is closed.

13.10.2023

Sma

Internet: Yes

Index: Yes/no

Speaking/non speaking order



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G.K.ILANTHIRAIYAN. J.
Sma

To

1. Special Judge,
Special Court for cases under the
Prevention of Corruption Act at Chennai
2. The Inspector of Police,
Vigilance and Anti-Corruption,
Head Quarters,
Chennai-600 028.
3. The Public Prosecutor,
Madras High Court,
Chennai.

Crl.O.P.Nos. 23779 and 23780 of 2023
and
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