



CrI.O.P.No.27836 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM:

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

CrI.O.P.No.27836 of 2023

M.Ramamoorthy

... Petitioner/Accused

Vs.

State Rep. By.,
Deputy Superintendent Of Police,
Vigilance And Anti Corruption,
Krishnagiri District.

... Respondent/Complainant

PRAYER: Criminal Original Petition had been filed under Section 482 of Cr.P.C, praying to set aside the order passed by the Learned Chief Judicial Magistrate Court, Krishnagiri in CrI.MP.No.14456 of 2023 in Spl.CC.No.04 of 2011 dated 20.11.2023.

For Petitioner : Mr.P.Ezhil Nilavan

For Respondent : Mr.S.Udaya Kumar
Govt.Advocate (crl.side)



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ORDER

This Petition is filed by the Accused seeking to set aside the order passed by the Learned Chief Judicial Magistrate Court, Krishnagiri, in CrI.MP.No.14456 of 2023 in Spl.CC.No.04 of 2011 dated 20.11.2023, dismissing the application filed under Section 311 Cr.P.C. seeking to recall PW 15.

2. Learned counsel for the petitioner submitted that the petitioner is the Accused No.1, facing trial in Spl.CC.No.04 of 2011, on the file of the Learned Chief Judicial Magistrate Court, Krishnagiri, for offence under Section 13(1)(d) of Prevention of Corruption Act. He would submit that the charge against the petitioner is, while he was working as Technical Assistant 230/110 KV/Substation, Uthanapalli, Krishnagiri Circle, he had demanded Rs.300, to effect Electricity connection and subsequently he was arrested on 22.04.2009.

3.The learned counsel for the petitioner would further submit that there are total 15 witnesses in this case and the prosecution has so far cross-examined PW.1 to PW.14 in full and PW.15 was cross examined in



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part on 19.08.2019. Thereafter, the petitioner had filed the application under Section 3(11) Cr.P.C. to recall PW.15 before the learned Judge for cross-examination, but without affording any opportunity to the petitioner, his application was dismissed. The petitioner submitted that if he is not permitted to recall and examine PW.15, who is the Investigating Officer, it would cause grave prejudice to the petitioner and thereby the present petition has been filed seeking to set aside the order rejecting the application to recall PW.15 for cross-examination.

4. Learned Government Advocate would submit that the case is of the year 2011 and PW.15 was examined in chief on 19.08.2018 and thereafter, on an application filed to recall PW.15, PW.15 was recalled and he appeared before the Court on 19.08.2019. Subsequently, the petitioner had cross-examined him in part and thereafter, he did not proceed further and the evidence on the side of the prosecution was closed. The case was then posted for questioned under 313 Cr.P.C., which was completed, and when the case was posted for arguments, the petitioner had filed an application seeking to alter the charge, which was dismissed. Thereafter, the petitioner had also approached this Court and filed Criminal RC No. 1797 of 2023, and this Court, by order dated 30.10.2023, dismissed the



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application. Subsequently, the petitioner did not argue the case and he has now come up with the petition.

5. Learned Government Advocate would further submit that the learned Trial Judge, had rightly found that the petition has been filed only for protracting the trial and dismissed the application and he would submit that the case now stands posted for arguments on 08.01.2024 and thereby, he would seek to dismiss the application.

6. Heard both sides and perused the materials available on record.

7. The petitioner is A1. The occurrence as stated has taken place on 22.04.2009. The final report in this case has been laid on 18.02.2011 and taken on file on 11.08.2011, in Special CC No. 4 of 2011. The Trial in this case has commenced on 21.02.2017. Thereafter, 15 Witnesses had been examined. More particularly, PW.15 was examined in Chief on 19.08.2018. However, after one year, the petitioner was recalled on 19.08.2019 and he was also cross-examined in part. Thereafter, the matter has been delayed and questioning under Section 313 Cr.P.C. was completed on 31.10.2023. Thereafter, the petitioner had filed an



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application seeking to alter the charges and that was also dismissed by the Trial Court and later it had been confirmed by this Court in Criminal RC No. 1797 of 2023, dated 30.10.2023.

8. It appears that the petitioner had protracted the trial from the year 2009. This Court is able to see the manner in which the trial had been delayed. I do not find any illegality or infirmity in the order passed by the learned Trial Judge in dismissing the application. However, in order to give one chance, this Court feels that the Petition can be allowed on imposing heavy cost.

9. It is now reported by the Learned Government Advocate that the case stands posted on 08.01.2024 for defense witness. It is also now stated by the Learned Government Advocate that the Investigating Officer will be available before the Court on 08.01.2024. In view of the above, one chance is being given to the petitioner and this petition stands allowed on condition that the petitioner shall deposit a sum of Rs.5,000/-, before the concerned Court, on or before 7.01.2024, along with an affidavit stating that the PW.15 will be cross-examined on the same day on 08.01.2024 and that he will strictly abide by the time frame fixed by the learner Trial Judge. Out of



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the sum of Rs.5,000/- being paid by the petitioner before the concerned Court, Rs.2,000/- shall be paid to PW.15 /the witness and Rs.3,000/- shall be paid to the Taluk Legal Services Authority.

10. With the above directions, the Crl.O.P. stands allowed. Cost of Rs.5,000/- is being imposed on the petitioner which shall be paid before the concerned Court, on or before 07.01.2024, out of which Rs.2,000/- shall be paid to PW.15 / the witness and Rs.3,000/- shall be paid to the Taluk Legal Services Authority.

12.12.2023

Index : Yes / No
Internet : Yes / No
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To

1. Deputy Superintendent Of Police,
Vigilance And Anti Corruption,
Krishnagiri District.
2. The Public Prosecutor
High Court, Madras.



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A.D.JAGADISH CHANDIRA, J.
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