



Crl.O.P.No.27958 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.27958 of 2023
and Crl.M.P.No.19406 of 2023

M.Sivasamy

... Petitioner

Vs.

The Station House Officer,
Vigilance and Anti-Corruption,
Villupuram.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to set aside the impugned order dated 05.10.2023 passed by the Special Court for Prevention of Corruption Act Cases (FAC), Chief Judicial Magistrate, Villupuram in Crl.M.P.No.92 of 2023 in Spl.C.No.3 of 2021 and consequently, direct to allow the petition to recall the witness PW2 Ramamurthy (LW2) filed by the petitioner under Section 311 Cr.P.C in Spl.C.No.3 of 2021 on the file of the Special Court for Prevention of Corruption Act Cases (FAC) , Chief Judicial Magistrate, Villupuram.



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For Petitioner : Mr.M.Palanivel
for Mr.S.Shankar
For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed seeking to set aside the order passed by the learned Special Court for Prevention of Corruption Act Cases (FAC), Chief Judicial Magistrate, Villupuram in Crl.M.P.No.92 of 2023 dated 05.10.2023.

2. Mr.M.Palanivel, learned counsel for the petitioner submitted that the petitioner is an accused facing trial in Special Case No.3 of 2021 for the offence punishable under Section 7 of Prevention of Corruption Act, pending on the file of the Special Court for Prevention of Corruption Act Cases (FAC), Chief Judicial Magistrate, Villupuram. He further submitted that the *de facto* complainant, Ramamurthy, who is examined as PW2 in this case, was examined in chief on 03.02.2023 and on the same day itself, the petitioner has cross examined the witness PW2 without any delay, however, only after perusing the



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depositions, the petitioner came to understand that certain vital questions were left out to be put to the witness PW2 and thereby, the petitioner had filed an application under Section 311 Cr.P.C seeking to recall PW2. Whereas, the trial Court had dismissed the same stating that the petition has been filed only to drag on the proceedings and that there is no merit to allow that petition. Against which, the present criminal original petition has been filed.

3. Learned counsel for the petitioner further submitted that there is no intention for the petitioner to delay the progress of the trial. He also submitted that if PW2 is produced before the trial Court on the next hearing date i.e., on 19.12.2023, the petitioner would further cross examine the witness in full on the same day itself without any delay, subject to the imposition of cost and terms as fixed by this Court.

4. Learned Government Advocate (Crl.Side) appearing for the respondent submitted that in Special Case No.3 of 2021, pending trial on the file of the Special Court for Prevention of Corruption Act Cases (FAC), Villupuram, the *de facto* complainant was examined as PW2 in chief on



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03.02.2023 and he has been cross examined at length by the learned counsel for the petitioner on the same day itself. He further submitted that the petition filed by the petitioner under Section 311 Cr.P.C seeking to recall PW2 has been filed belatedly on 28.04.2023 and the trial Court, taking into consideration the detailed cross examination done by the learned counsel for the petitioner and rightly finding that the petition has been filed only to delay the progress in the trial, had dismissed the application. He also submitted that there is no infirmity or illegality in the order passed by the learned trial Judge. He further submitted that the case now stands posted for examination of LW4 and LW5 on 19.12.2023 and there are 20 list witnesses in this case. However, he sought for dismissal of the petition.

5. At this juncture, the learned counsel for the petitioner reiterated that the petitioner would complete further cross examination of PW2 on the next hearing date without fail and he is ready to pay costs.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and perused the materials



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available on record.

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7. Perusal of records shows that the learned trial Judge, finding that the petitioner has extensively cross examined PW2 and that the petition has been filed only to delay the trial proceedings, had dismissed the petition filed by the petitioner. This Court does not find any illegality in the finding of the trial Court. However, to give a final chance and taking note of the undertaking given by the learned counsel for the petitioner, that if PW2 is produced before the trial Court on 19.12.2023, he would be further cross examined on the same day without fail and that the petitioner is ready to pay cost to PW2, this Court is inclined to allow the petition.

8. In view of the above, the order passed by the learned Special Judge, Special Court for Prevention of Corruption Act Cases (FAC), Villupuram in Crl.M.P.No.92 of 2023 dated 05.10.2023, is set aside and the criminal original petition stands allowed on the following conditions :-

(i) The petitioner shall deposit a sum of Rs.1,000/- (Rupees One Thousand only) to the credit of District Legal Service Authority, Villupuram on or before 18.12.2023 ;



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(ii) The petitioner shall also deposit a sum of Rs.2,000/- (Rupees Two Thousand only) before the Special Court for Prevention of Corruption Act Cases (FAC), Villupuram on or before 18.12.2023;

(iii) The trial Court is directed to recall the witness PW2 for cross examination on 19.12.2023 and shall release a sum of Rs.2000/- to the witness on his appearance ;

(iv) The petitioner shall complete further cross examination of PW2 on the same day of his appearance before the Court and in the event of petitioner not cross examining the witness on the date of his appearance, he will lose the chance of cross examining PW2.

9. Consequently, the connected miscellaneous petition is closed.

14.12.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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Note : Issue order copy today (14.12.2023)



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1. The Special Judge,
Special Court for Prevention of Corruption Act Cases (FAC),
Villupuram.
2. The Station House Officer,
Vigilance and Anti-Corruption,
Villupuram.
3. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

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