



Crl.O.P.(MD).No.11036 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

Crl.O.P.(MD).No.11036 of 2023

and

Crl.M.P.(MD).No.8766 of 2023

1.Sasikala

2.Narasimhan

... Petitioners

Vs.

State rep. by its
The Inspector of Police,
Vigilance and Anti-Corruption Police Station,
Pudukkottai,
Crime No.9 of 2012

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records of the order in Crl.M.P.No.134 of 2023 in Spl.C.C.No.1 of 2014 on the file of the Chief Judicial Magistrate, Pudukkottai, dated 01.06.2023 and set aside the same and consequently, direct the Chief Judicial Magistrate, Pudukkottai to recall and examine accused / petitioner.



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For Petitioners : Mr.D. Rameshkumar
For Respondent : Mr.T. Senthilkumar
Additional Public Prosecutor

ORDER

The petitioners, who are the accused in Spl.C.C.No.1 of 2014 on the file of the Chief Judicial Magistrate, Pudukkottai, filed this petition challenging the impugned order passed in Crl.M.P.No.134 of 2023, dated 01.06.2023 filed for recalling the witness PW.2 for further cross examination.

2. The respondent police filed a final report as against the petitioners and other accused for the offences under Sections 7, 13(i)(d) r/w 13(2) of the Prevention of Corruption Act. They are said to have demanded and received bribe amount of Rs.8,000/-. They were entrapped and the respondent police after completion of the investigation filed the final report and the same was taken on file in Spl.C.C.No.1 of 2014 on the file of the Chief Judicial Magistrate, Pudukkottai.



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3.The prosecution examined witnesses and after completion of Section 313 of Cr.P.C., questioning, the case was posted for defense witness. At this stage, the petitioner filed the petition under Section 311 Cr.P.C., to recall and further cross examine P.W.2. They stated that earlier counsel on record, failed to cross examine the witness on material aspects and hence, they have engaged new counsel and the new counsel wants to cross examine the said witness. The said petition was dismissed by the learned trial Judge stating that P.W.2 was examined in chief on 06.02.2018 and cross examined on 11.09.2018 and this petition was filed to win over P.W.2 and also relied the judgment of the Hon'ble Supreme Court reported in **2019(2) Scale 654 , 2016 Vol. 8 SCC 762** and also **Vinoth Kumar vs. State of Punjab** reported in **2015 (3) SCC 220**. Challenging the same, the petitioner filed this Criminal revision case.

4. According to the petitioners, after their new counsel filed the change of vakalat, the new counsel found out that some material aspect was left out by the earlier counsel while cross examining the witness. Hence, they have filed a petition to recall the witness PW.2. The said petition was opposed by the respondent stating that the witness examination was already completed in the year 2018 and PW.2 was fully



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cross examined. In order to protract the trial, the petitioners filed this petition without any *bonafide* reason.

5. This Court considered the rival submissions and perused the materials available on record.

6. This Court also perused the cross examination of P.W.2. The cross examination runs more than seven pages. The witness was subjected to incisive cross examination and almost all the questions were put to the said witness. The change of counsel is not a ground to allow the petition filed under Section 311 of Cr.P.C., as held by the Hon'ble Supreme Court in the case of ***Vinoth Kumar vs. State of Punjab*** reported in ***2015 (3) SCC 220*** and the same has been rightly followed by the learned trial Judge.

7. In this case, the trap was conducted on 11.12.2012. P.W.2 complainant was examined in chief on 06.02.2018. He was subjected to cross examination on 11.09.2018. In the said circumstances, the apprehension expressed by the respondent vigilance department that there is a chance to win over is well founded. In all aspect, this Court



8. Accordingly, this Criminal Original Petition is dismissed.

05.07.2023

To

1. The Chief Judicial Magistrate, Pudukkottai,
2. The Inspector of Police,
Vigilance and Anti-Corruption Police Station,
Pudukkottai,
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K. RAMAKRISHNAN. J.,

trp/sbn

Order made in
Crl.O.P(MD).No.11036 of 2023 and
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Dated : 05.07.2023