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Crl.O.P.Nos.5434, 5436, 5437, 5581, 5584, 5586,
5814, 5818, 5820, 5821, 5822 & 5825 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM

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

**Crl.O.P.Nos.5434, 5436, 5437, 5581, 5584, 5586,
5814, 5818, 5820, 5821, 5822 & 5825 of 2024**

In Crl.O.P.No.5434 of 2024 :-

P.Kamalakaran

... Petitioner

Vs.

1. The State represented by,
The Inspector of Police,
SPE:CBI:EOW:Chennai.
2. P.M.Praveen Kumar

... Respondents

In Crl.O.P.No.5436 of 2024 :-

P.Kamalakaran

... Petitioner

Vs.

1. The State represented by,
The Inspector of Police,
SPE:CBI:EOW:Chennai.
2. P.M.Praveen Kumar

... Respondents

In Crl.O.P.No.5437 of 2024 :-

P.Kamalakaran

... Petitioner



Crl.O.P.Nos.5434, 5436, 5437, 5581, 5584, 5586,
5814, 5818, 5820, 5821, 5822 & 5825 of 2024

Vs.

1. The State represented by,
The Inspector of Police,
SPE:CBI:EOW:Chennai.
2. E.P.Prakash
3. Douloth Basha
4. M.V.Martin

... Respondents

In Crl.O.P.Nos.5581 of 2024 :-

P.Kamalakannan

... Petitioner

Vs.

1. The State represented by,
The Inspector of Police,
SPE:CBI:EOW:Chennai.
2. M.V.Martin

... Respondents

In Crl.O.P.Nos.5584 of 2024 :-

P.Kamalakannan

... Petitioner

Vs.

1. The State represented by,
The Inspector of Police,
SPE:CBI:EOW:Chennai.
2. R.Pugazhendi

... Respondents

In Crl.O.P.No.5586 of 2024 :-

P.Kamalakannan

... Petitioner

Vs.

1. The State represented by,
The Inspector of Police,



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5814, 5818, 5820, 5821, 5822 & 5825 of 2024

SPE:CBI:EOW:Chennai.

2. P.M.Praveen Kumar

... Respondents

In Crl.O.P.No.5814 of 2024 :-

P.Kamalakaran

Vs.

... Petitioner

1. The State represented by,
The Inspector of Police,
SPE:CBI:EOW:Chennai.

2. P.M.Praveen Kumar

... Respondents

In Crl.O.P.No.5818 of 2024 :-

P.Kamalakaran

Vs.

... Petitioner

1. The State represented by,
The Inspector of Police,
SPE:CBI:EOW:Chennai.

2. R.Pugazhendi

... Respondents

In Crl.O.P.Nos.5820 & 5821 of 2024 :-

P.Kamalakaran

Vs.

... Petitioner

1. The State represented by,
The Inspector of Police,
SPE:CBI:EOW:Chennai.

2. P.M.Praveen Kumar

... Respondents

In Crl.O.P.No.5822 of 2024 :-

P.Kamalakaran

Vs.

... Petitioner



Crl.O.P.Nos.5434, 5436, 5437, 5581, 5584, 5586,
5814, 5818, 5820, 5821, 5822 & 5825 of 2024

1. The State represented by,
The Inspector of Police,
SPE:CBI:EOW:Chennai.

2. M.V.Martin

... Respondents

In Crl.O.P.No.5825 of 2024 :-

P.Kamalakannan

... Petitioner

Vs.

1. The State represented by,
The Inspector of Police,
SPE:CBI:EOW:Chennai.

2. E.P.Prakash

3. Douloth Basha

4. M.V.Martin

... Respondents

Prayer in Crl.O.P.No.5434 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order in C.M.P.No.161 of 2024 in C.C.No.9 of 2020 dated 21.02.2024 passed by the learned II Additional District Judge (CBI Cases), Coimbatore, in the interest of justice.

Prayer in Crl.O.P.No.5436 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order in C.M.P.No.164 of 2024 in C.C.No.10 of 2020 dated 21.02.2024 passed by the learned II Additional District Judge (CBI Cases), Coimbatore, in the interest of justice.

Prayer in Crl.O.P.No.5437 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order in



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C.M.P.No.156 of 2024 in C.C.No.8 of 2020 dated 21.02.2024 passed by the learned II Additional District Judge (CBI Cases), Coimbatore, in the interest of justice.

Prayer in Crl.O.P.No.5581 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order in C.M.P.No.173 of 2024 in C.C.No.13 of 2020 dated 21.02.2024 passed by the learned II Additional District Judge (CBI Cases), Coimbatore, in the interest of justice.

Prayer in Crl.O.P.No.5584 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order in C.M.P.No.170 of 2024 in C.C.No.12 of 2020 dated 21.02.2024 passed by the learned II Additional District Judge (CBI Cases), Coimbatore, in the interest of justice.

Prayer in Crl.O.P.No.5586 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order in C.M.P.No.167 of 2024 in C.C.No.11 of 2020 dated 21.02.2024 passed by the learned II Additional District Judge (CBI Cases), Coimbatore, in the interest of justice.

Prayer in Crl.O.P.No.5814 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order in C.M.P.No.165 of 2024 in C.C.No.11 of 2020 dated 21.02.2024 passed by the learned II Additional District Judge (CBI Cases), Coimbatore, in the interest of justice.



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Prayer in Crl.O.P.No.5818 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order in C.M.P.No.168 of 2024 in C.C.No.12 of 2020 dated 21.02.2024 passed by the learned II Additional District Judge (CBI Cases), Coimbatore, in the interest of justice.

Prayer in Crl.O.P.No.5820 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order in C.M.P.No.162 of 2024 in C.C.No.10 of 2020 dated 21.02.2024 passed by the learned II Additional District Judge (CBI Cases), Coimbatore, in the interest of justice.

Prayer in Crl.O.P.No.5821 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order in C.M.P.No.159 of 2024 in C.C.No.9 of 2020 dated 21.02.2024 passed by the learned II Additional District Judge (CBI Cases), Coimbatore, in the interest of justice.

Prayer in Crl.O.P.No.5822 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order in C.M.P.No.171 of 2024 in C.C.No.13 of 2020 dated 21.02.2024 passed by the learned II Additional District Judge (CBI Cases), Coimbatore, in the interest of justice.

Prayer in Crl.O.P.No.5825 of 2024 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order in C.M.P.No.154 of 2024 in C.C.No.8 of 2020 dated 21.02.2024 passed by the



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learned II Additional District Judge (CBI Cases), Coimbatore, in the interest of
justice.

In all Crl.O.Ps.,

For Petitioners : Mr.B.Ullasavelan
For R1 : Mr.K.Srinivasan
Special Public Prosecutor for CBI

COMMON ORDER

The Criminal Original Petitions in Crl.O.P.Nos.5434, 5436, 5437, 5581, 5584 & 5586 of 2024 have been filed seeking to set aside the orders passed by the learned II Additional District Judge (CBI Cases), Coimbatore, in C.M.P.Nos.156, 161, 164, 167, 170 & 173 of 2024 in C.C.Nos. 8 to 13 of 2020 vide orders dated 21.02.2024 refusing to waive the cost of Rs.24,000/- (Rs.4000/- in each case = Rs.4000 x 6 cases) towards recalling of PW3.

2. The Criminal Original Petitions in Crl.O.P.Nos.5814, 5818, 5820, 5821, 5822 & 5825 of 2024 have been filed seeking to set aside the orders passed by the learned II Additional District Judge (CBI Cases), Coimbatore, in C.M.P.Nos.154, 159, 162, 165, 168, & 171 of 2024 in C.C.Nos. 8 to 13 of 2020



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vide orders dated 21.02.2024 dismissing the petition filed under Section 311 Cr.P.C., seeking to recall PW1.

2. The brief facts of the case is that the first respondent had registered the First Information Report in R.C.No.6/E/2018-CBI/EOW/Chennai on 26.09.2018 for the offence under Sections 409, 420, 423, 467, 468 and 477A IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. After completion of the investigation, the respondent had filed six charge sheets for the same offences before the learned II Additional District Judge (CBI Cases), Coimbatore, on 19.11.2020 by splitting the single First Information Report into six cases and the same were taken cognizance by the trial Court in C.C.Nos. 8 to 13 of 2020. Thereafter, on the appearance of the accused, copies of the charge sheets were furnished to the accused on 27.10.2021 and charges were framed on 08.03.2021. After the commencement of trial, PW1 was examined in chief on 24.03.2021 and on 24.08.2021 and thereafter, PW1 was cross examined by the accused on three days viz.19.07.2023, 23.09.2023 and on 07.10.2023. PW2 was examined in chief on 04.09.2021 and the chief examination of PW3 was completed on 06.10.2021 and after that, PW4 was examined and fresh summon was issued to LW5.



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3. At that stage, the petitioner has filed separate applications in each Calender Case seeking to recall PW1 and PW3 for cross-examination. It was contended by the petitioner that those witnesses were examined in chief during Covid-19 pandemic period and the previous counsel, who had handled the case is a senior citizen and he was having some health issues, was unable to travel from Madurai to Coimbatore and therefore, PW1 was not properly cross examined and PW3 was not at all cross examined. It was also contended by the petitioner that he was suspended from service on 12.06.2017 and subsequently, dismissed from Repco Bank and thereby, he is without job and income.

4. The trial Court had dismissed the petitions filed by the petitioner seeking to recall PW1, however, the trial Court had allowed the petitions seeking to recall PW3 imposing condition to deposit a sum of Rs.24,000/- (Rs.4000 x 6 cases) towards recalling of PW3. Thereby, two different sets of Criminal Original Petitions have been filed seeking to set aside the orders passed by the trial Court, out of which 6 cases are relating to recall of PW1 and the other 6 cases are relating to waive the cost imposed towards recalling of PW3.



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5. Learned counsel for the petitioner submitted that the trial had commenced during Covid pandemic period and PW1 was examined in chief for two days and through him, 40 documents were marked in each case (6 cases x 40 documents totaling 240 documents). He further submitted that though the petitioner had cross examined PW1 for three days, the earlier counsel, due to his old age and illness, was unable to cross examine PW1 in full and certain vital questions relating to the documents have not been put to PW1 and thereby, the petitions in C.M.P.Nos.154, 159, 162, 165, 168, & 171 of 2024 in C.C.Nos. 8 to 13 of 2020 had been filed seeking to recall PW1 for further cross examination, whereas, the trial Court had dismissed the same stating that the second recall application is not maintainable.

6. He further submitted that in respect of PW3, she was not at all cross examined and thereby, petitions in C.M.P.Nos.156, 161, 164, 167, 170 & 173 of 2024 in C.C.Nos. 8 to 13 of 2020 have been filed before the trial Court, whereas, the trial Court while allowing those petitions, had imposed onerous condition of exorbitant cost of Rs.24,000/- (Rs.4000 for each case) as cost, which is against



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logic. He also submitted that the petitioner is without employment for several years and the cost imposed is exorbitant. He further submitted that the cross examination of witnesses PW1 and PW3 is necessary for arriving at a just decision of the case and if the petitioner is not permitted to cross examine the witnesses, it will amount to a refusal of granting an opportunity of fair trial to the petitioner, which would gravely prejudice him.

7. The learned counsel for the petitioner further submitted that the petitioner has also filed Memorandums of Undertaking to complete the further cross examination of PW1 in all cases, if two exclusive days are fixed for PW1 and complete the cross examination of PW3 in all cases, if two exclusive days are fixed for cross examination of PW3. He further submitted that the petitioner is ready to pay the reasonable cost for the appearance of the witnesses PW1 and PW3 before the trial on two days fixed by the trial Court. He also submitted that if one final chance is not given to the petitioner to further cross examine PW1 and the exorbitant amount imposed as cost is not waived PW3, the petitioner would put to untold hardship. Hence, he prayed that suitable orders may be passed.



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8. Learned Special Public Prosecutor for CBI submitted that the petitioner is arrayed as A1 in all the six cases in C.C.Nos. 8 to 13 of 2020. He further submitted that right from the commencement of trial, the petitioner had been adopting dilatory tactics and causing willful and deliberate delay in trial. He also submitted that as far as PW1 is concerned, the petitioner had exhaustively cross examined him for three days and the trial Court, finding that recall of PW1 is only a dilatory tactics adopted by the petitioner, had dismissed the applications and so far as the cost in respect of PW3 is concerned, the witness has to travel all the way from Chennai to Coimbatore, thereby, the trial Court had imposed such cost.

9. He further submitted that when PW1 was earlier recalled, the trial Court had imposed a cost of Rs.12,000/- and the petitioner after paying the same, had cross examined him. He also submitted that in respect of the petitions filed by the other accused, the trial Court had granted orders for recalling PW1 and PW3, however, dates have not been fixed for their appearance. He further submitted that the respondent does not want to precipitate the matter by delaying trial any further and in the interest of speedy trial, the respondent is also ready to produce



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the witnesses PW1 and PW3 subject to imposition of condition and the petitioner agreeing to complete the cross examination within two days as per the undertaking given by him.

10. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor for CBI for the first respondent and perused the materials available on record.

11. A perusal of record and adjudications shows that PW1 had been cross examined in length by the petitioner for about three days, whereas, PW3 has not been cross examined so far. Further, it is seen that the trial has been delayed on account of the pendency of the petitions and thereby, the trial Court, taking note of the mandate of the decision of the Hon'ble Apex Court in ***Vinod Kumar Vs State of Punjab***, reported in ***AIR 2015 SC 1206***, had dismissed the applications filed in C.M.P.Nos.154, 159, 162, 165, 168, & 171 of 2024 to recall PW1 and imposed cost in C.M.P.Nos.156, 161, 164, 167, 170 & 173 of 2024, while allowing the petitions to recall PW3. This Court does not find any infirmity in the orders passed by the trial Court, however, the cost imposed seems to be on the



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higher side and thereby, in the interest of justice and to balance the rights of both sides and also taking into consideration the Memorandums filed by the petitioner that the witnesses will be cross examined within two hearings, if two exclusive days are given, this Court, is inclined to allow these petitions and set aside the orders passed by the trial Court subject to imposition of the following conditions.

(i) The petitioner shall pay an amount of Rs.16,000/- each for PW1 and PW3 (inclusive for two days). The amount of Rs.32,000/- shall be deposited within a period of one week from the date of receipt of a copy of this order;

(ii) The trial Court shall fix two exclusive days for further cross examination of PW1 and two exclusive days for cross examining PW3;

(iii) The petitioner shall cross examine PW1 and PW3 in all the six cases within the two exclusive days fixed by the learned trial Judge, as per the undertaking given by him;

(iv) If the petitioner fails to cross examine PW1 and PW3 within two days fixed by the trial Court, he shall lose the chance of cross examination and he shall not be afforded any further chance.



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12. Accordingly, the Criminal Original Petitions are allowed setting aside the orders passed by the trial Court in C.M.P.Nos.154, 156, 159, 161, 162, 164, 165, 167, 168, 170, 171 & 173 of 2024 in C.C.Nos. 8 to 13 of 2020 dated 21.02.2024 subject to the above conditions. The Memorandums filed by the petitioner shall form part of the records.

11.03.2024

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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Note : Issue order copy on 12.03.2024

To

1. The II Additional District Judge (CBI Cases),
Coimbatore.
2. The Inspector of Police,
SPE:CBI:EOW:Chennai.
3. The Special Public Prosecutor for CBI,
High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

ham.

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11.03.2024