



Crl.O.P.No.24772 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2024

CORAM :

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

Criminal Original Petition No.24772 of 2024

1. Mohamed Thowfeeq
S/o Kamal Batcha
2. Mohamed Farvees
S/o Ismath Batcha
3. Thowheeth Batcha
S/o Tharik Batcha

.. Petitioners

v.

State rep.by
The Chief Investigation Officer
National Investigation Agency
Kochi Branch
in R.C.No.06/2019/NIA/DLI

.. Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, against the order dated 29th August, 2024 passed in Crl.M.P.No.1013 of 2024 in Spl.S.C.No.20 of 2022 on the file of the learned Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases and Special Court for POTA Cases), Chennai at Poonamallee, to direct the learned Special Court under the National Investigation Agency Act, 2008, Poonamallee, Chennai 600 056 to permit the petitioners to conduct cross examination of P.W.1 with



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respect to motive aspect in Spl.S.C.No.20 of 2022 on the file of the learned Special Court under the National Investigation Agency Act, 2008, Poonamallee, Chennai 600 056.

For Petitioners :: Mr.R.Sankarasubbu

For Respondent :: Mr.R.Karthikeyan
Mr.B.Mohan and
Mr.Siddiramulu
Special Public Prosecutor for NIA

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM,J.)

Under assail is the order dated 29th August, 2024 passed in Crl.M.P.No.1013 of 2024 in Spl.S.C.No.20 of 2022 on the file of the learned Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases and Special Court for POTA Cases), Chennai at Poonamallee.

2. The petitioners are Accused Nos.6, 7 & 8 in Spl.S.C.No.20 of 2022. When the trial is in progress, the petitioners/accused filed a petition under Section 231(2) of the Code of Criminal Procedure to permit the defence to cross-examine PW2 after examination of PW1. It is not in dispute



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that PW1 is none other than the son of the deceased and an eye-witness.

PW2 is the wife of the deceased. These two witnesses are important witnesses as far as the prosecution is concerned. The petition was considered by the trial Court and an order in detail was passed setting out the progress made in the trial.

3. The date of occurrence was on 05.02.2019. Final report was filed on 02.08.2019. 13 accused are involved. Charges were framed on 01.12.2021. Accused Nos.1 to 13 are charged under Sections 16(1)(a), 18, 20 of UAPA, 1967 under Sections 153(A)(1)(B) of IPC, 341, 294(b), 302 against Accused No.8, under Section 302 read with 109 of IPC against Accused Nos.1 to 7, 9 to 13 and under Section 212 of IPC against Accused No.10. Since the accused persons denied the charges, trial commenced.

4. Admittedly, 64 witnesses have already been examined by the trial Court. PW1 and PW2 were examined in chief on 24.02.2022/25.02.2022. LW11 protected witness was examined as PW24 on 20.03.2024. LW10 protected witness was examined as PW37. Thereafter, on 16.05.2021, from



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11.39 A.M., PW1 was cross examined by the counsel for the accused Nos.1 to 3, 5 to 13 till 12.47 P.M., and on the same day, PW2 was cross examined by accused Nos.1 to 3, 5 to 13. At that point of time, an application was filed on 16.05.2024 at 3.10 P.M., by the petitioners to defer permitting the defence to cross examine PW2 after examination of PW1.

5. The trial Court considered the scope of Section 231(2) of the Code of Criminal Procedure. The trial Court considered the manner in which the defence cooperated for an effective trial. The findings of the Special Court would reveal that the accused have filed four applications under Section 311 Cr.P.C., and all the four applications to recall the witnesses were allowed. The repeated filing of petitions to recall the witnesses were considered and the trial Court made a finding that the repeated applications filed by the accused would itself go to show that they are attempting to protract the trial proceedings. Since the trial Court found that there is no merit, the application was dismissed. Consequently, the present petition under Section 482 Cr.P.C., came to be instituted before this Court.



6. The purpose and object of Section 231(2) of the Code at no circumstances be allowed to be defeated. Section 231 denotes evidence for prosecution. Sub-section (1) states that on the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution. Therefore, on the date fixed, the Judge shall proceed to take all such evidence as may be produced by the prosecution.

7. Pertinently, Section 309 speaks about the power to postpone or adjourn proceedings. Sub-section (1) of Section 309 enumerates that “In every inquiry or trial the proceedings shall continue from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.”

Proviso to sub-section (2) of Section 309 stipulates that “Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing.”

The subsequent proviso also indicates that “Provided also that no



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adjournment shall be granted for the purpose of enabling the accused person to show cause against the sentence proposed to be imposed on him.”

Provided that no adjournment shall be granted at the request of party except where the circumstances are beyond the control of the party.”

8. The Code of Criminal Procedure and the procedures contemplated at no circumstances allowed to be diluted at the instance of any of the parties to the criminal trial. Once Section 231 contemplate the procedures, it cannot be read in isolation and a holistic understanding of the Code would be of paramount importance for an effective criminal trial to meet the ends of justice.

9. When the provision confers discretion on the Judge to permit cross examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross examination, to facilitate the Court to conduct trial in an effective manner, such a provision cannot be allowed to be abused by the accused for the purpose of prolonging or protracting the trial. Sub-section (2) of Section



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231 cannot be construed as an absolute right of the accused. It confers power on the Judge in his discretion to permit the cross examination of any witness to be deferred until any other witness or witnesses have been examined. Therefore, the Judge in his opinion feels that such a deferment is required, then alone he can permit and certainly not at the instance of the accused. No doubt, the learned counsels appearing on behalf of the prosecution or defence may bring it to the notice of the Court about certain discrepancies, defects, etc. However, the discretion vest with the Court to take a decision and therefore filing a petition, passing of a detailed order, thereafter preferring an appeal under Section 482 Cr.P.C., would result in defeating the objective of the procedures contemplated.

10.During examination of one witness or other, neither of the parties be allowed to file such petition and if such petitions are filed to prolong and protract the trial, then it is to be rejected in limine. It may not be preferable for the Courts to entertain such petitions on each occasion and to pass a detailed order, which would result in filing of an appeal and no trial will come to an end.



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11. Any such delay tactics or modus adopted is to be thwarted by the Courts. The Courts cannot encourage such practice of filing unnecessary or frivolous petitions and pass lengthy orders. When Section 309 in unequivocal terms contemplates that no adjournment shall be granted on commencement of trial and only on exceptional circumstances by recording reasons, adjournments are to be granted, such petitions filed in order to increase the longevity of the litigation may result in paving way for an accused to escape from the clutches of law.

12. This Court has witnessed many such petitions filed under Section 482 Cr.P.C., challenging the orders of the trial Court during the midway to trial. This Court also emphasize that the trial Court before entertaining such petition, has to ascertain, whether the accused has got a right to file such petition and if so, such right is recognized under any provision of law. Any petition not supported by provision of law deserves no admission and to be rejected in limine.



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13. In the case of *Vineethkumar v. State of Punjab*, 2015 Crl.L.J.

1442 (SC), the Apex Court reiterated that where the witness is present in the Court, adjournment in the case should not be granted.

14. Recently, the Supreme Court in the case of *Surender Singh v.*

State (NCT of Delhi) reported in 2024 7 SCC 40, held as follows:-

“11. The defence did not cross-examine this witness immediately after her examination-in-chief, but sought that the cross examination be deferred, which was done and she was cross-examined only on 30.11.2024, which is more than two months after her examination-in-chief. We may just stop here for a while only to sound a note of caution. Such long adjournment as was given in this case after examination-in-chief, should never have been given. Reasons for this are many, but to our mind the main reason would be that this may affect the fairness of the trial and may even endanger, in a given case, the safety of the witness. As far as possible, the defence should be asked to cross examine the witness the same day or the following day. Only in very exceptional cases, and for reasons to be recorded, the cross examination should be deferred and a short adjournment can be given after taking



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precautions and care, for the witness, if it is required. We are constrained to make this observation as we have noticed in case after case that cross examinations are being adjourned routinely which can seriously prejudice a fair trial.”

15. In the present case, the examination of witnesses are in progress and the petition filed before the trial Court became unnecessary and rightly rejected by the trial Court with an observation that the accused filed the petition to protract the trial proceedings. In view of the facts and circumstances, we arrive at an irresistible conclusion that the petitioners have not made out any acceptable ground for the purpose of considering the present petition. In the event of any further attempt to prolong and protract the trial at the instance of an accused, the prosecution is at liberty to file appropriate petition for cancellation of bail. In the event of any such petition being filed, the trial Court is requested to dispose of the same as expeditiously as possible.

16. Since the accused had not availed the opportunity to cross



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examine PW1 and PW2, they are at liberty to file a petition to recall PW1 and PW2 at their own cost. The learned Special Public Prosecutor would submit that PW1 is now employed at Singapore and in the event of allowing the recall petition, cost must be borne by the petitioners herein. Therefore, we make it clear that the trial Court may consider the recall petition if any filed for continuation of cross examination and in the event of recalling the witnesses, the travel expenditures and other expenditures must be borne by the petitioners herein. Further, it is made clear that the date for cross examination shall be fixed and on that day, the petitioners shall complete the cross examination of the witnesses and in the event of any further adjournment at the instance of the accused, the trial Court is at liberty to proceed with the trial by following further procedures. With these observations, the criminal original petition stands dismissed.

Index : yes/no
Neutral citation : yes/no

(S.M.S.,J.) (M.J.R.,J.)
29.11.2024

SS

To



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1. The Special Judge
Special Court under the National
Investigation Agency Act
(Sessions Court for Exclusive
Trial of Bomb Blast
Cases and Special Court
for POTA Cases)
Chennai at Poonamallee
2. The Chief Investigation Officer
National Investigation Agency
Kochi Branch
3. The Special Public Prosecutor
for NIA Cases
High Court, Madras



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S.M.SUBRAMANIAM,J.

AND

M.JOTHIRAMAN,J.

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