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CRL.O.P.No.14848 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.O.P.No.14848 of 2024

and

CRL.M.P.No.9094 of 2024

The Assistant Director,
Director of Enforcement,
Ministry of Finance, Department of Revenue,
5th and 6th Floor, BSNL Administrative Building,
No.2, Kush Kumar Road, Nungambakkam,
Chennai – 600 034.

... Petitioner

Vs.

1.Shri.B.Subramanyam
2.Shri.K.Gnanasekaran

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order dated 06.03.2024 in Crl.M.P.No.3647 of 2024 in C.C.No.15 of 2015 passed by Learned Principal Sessions Judge, Chennai with respect to recall of P.W5, Mr.Syed Bazlullah and thereby permit this petitioner to recall Mr.Syed Bazlullah, the then IO/DSP in CBI, BS and FC who was earlier examined as P.W5 and examine the same in the interest of justice.



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For Petitioner	: Mr.Rajinish Pathiyil Special Public Prosecutor [For Enforcement Directorate]
For R1	: No Appearance
For R2	: Mr.S.Raveekumar For Mr.A.B.Ashok

ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The order dated 6th March, 2024 passed in Crl.M.P.No.3647 of 2024 in C.C.No.15 of 2015 on the file of the Court of Sessions at Chennai is sought to be assailed in the present criminal original petition.

2. The Assistant Director, Directorate of Enforcement is the petitioner before this Court. The petitioner filed miscellaneous petition under Section 311 of Criminal Procedure Code to reopen the complainant side evidence and examine witnesses. The petition was filed mainly on the ground that inadvertently the First Information Report (F.I.R) was not marked during the relevant point of time. Subsequently, the Superintendent of Police, who registered the F.I.R. got promoted to the post of Additional Director General



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of Police (ADGP) and transferred to the State of Karnataka. Now he is holding the post of ADGP (Law and Order). Thus, he is not in a position to respond to the summons issued.

3. Under these circumstances, the petitioner / Assistant Director, Directorate of Enforcement filed a petition under Section 311, enabling P.W.5 / Investigating Officer of the predicate offence to mark F.I.R. for the purpose of proceeding with the trial. The Trial Court though not disputed these basic facts rejected the petition mainly on the ground that the officer registered the F.I.R. alone should present for marking the F.I.R. More so, on earlier occasion, nine witnesses were examined and the petitioner has not initiated steps to bring L.W.7 for marking F.I.R.

4. Mr.S.Raveekumar, learned counsel for the 2nd respondent strenuously objected by stating that the Officer, who registered the F.I.R. in predicate offence alone is competent to mark the document before the Trial Court.

5. In the present case, though opportunities were provided, the respondent is unable to bring the officer, who registered the offence of



predicate offence. Therefore, the Trial Court is right in rejecting the application filed by the petitioner under Section 311 of Criminal Procedure Code.

6. Further, it is contended that the F.I.R. is not an essential document and it will not destroy the case of the petitioner and marking F.I.R. after filing charge sheet may not be required. However, such an argument is unacceptable under law.

7. In the cases of PMLA, certain hyper-technical ground not causing prejudice to the interest of an accused person need not be considered. Constructive interpretation of provisions are imminent in such circumstances to ensure delivery of justice to the parties.

8. The scope of Section 311 of Criminal Procedure Code is to ensure that petition for recall and re-examine any person or to re-examine can be permitted in the interest of justice. In the present case, the F.I.R. has been registered by L.W.7 for predicate offence. However, the trial has been undertaken under the provisions of Prevention of Money Laundering Act, 2002 [hereinafter referred as “PMLA”] for the alleged offences under Section



3 and punishment under Section 4 of PMLA. Therefore, the F.I.R. is to be construed as a document. Thus, it is not necessary that the officer registered the F.I.R. for predicate offence must be present for marking the F.I.R. More so, marking the F.I.R. through P.W.5, Investigating Officer of predicate offence would not cause any prejudice to the accused for defending his case in the trial.

9. Adopting a pragmatic approach and considering the scope of Section 311 of Criminal Procedure Code and considering the likelihood of causing prejudice to the accused in PMLA case trial, we are inclined to consider the present criminal original petition.

10. It is relevant to rely on the judgment of the Hon'ble Supreme Court of India in the case of ***Rajendra Prasad vs. Narcotic Cell Through its Officer Incharge, Delhi***¹, the relevant portion is extracted hereunder:

“7. It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act, 1872 by saying that the court could not "fill the lacuna in the prosecution case". A lacuna in the

1 [(1999) 6 SCC 10]



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prosecution is not to be equated with the fallout of an oversight committed by a Public Prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage “to err is human” is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as a lacuna which a court cannot fill up.

8. Lacuna In the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of Criminal Justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.”



WEB COPY 11. In the case of ***Hanuman Ram vs. State of Rajasthan and Others***²,

the Apex Court held as follows;

“7. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquires and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion

2 [MANU/SC/8107/2008]



conferred is to be exercised judiciously, as the wide the power the greater is the necessity for application of judicial mind.

8. As indicated above, the Section is wholly discretionary. The second part of it imposes upon the Magistrate an obligation: it is, that the Court shall summon and examine all persons whose evidence appears to be essential to the just decision of the case. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court. Sections 60, 64 and 91 of the Indian Evidence Act, 1872 (in short 'Evidence Act'), are based on this rule. The Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in Weighing the evidence, the Court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The Court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts, elicited in the evidence. In such cases, the court has to act under the second part of the section. Sometimes the examination of witnesses as directed by the court may result in



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what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and had to be determined by the presiding judge."

12. In view of the facts and circumstances, the order impugned dated 06.03.2024 in Crl.M.P.No.3647 of 2024 in C.C.No.15 of 2015 passed by Learned Principal Sessions Judge, Chennai is set aside and the Criminal Original Petition stands allowed.

[S.M.S., J.] [V.S.G., J.]
08.08.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

The Learned Principal Sessions Judge, Chennai.



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