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CRL.O.P.No.18941 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2024

CORAM :

MR. JUSTICE N.SESHASAYEE

CRL.O.P.No.18941 of 2024

P.Soundararajan

... Petitioner

Vs.

State rep. by
Inspector of Police
Vigilance & Anti Corruption
Chennai
(Cr. No.23 / AC/2011)

... Respondent

PRAYER: Criminal Original Petition filed under Section 528 of BNSS to set aside the order passed by the learned Special Judge and Chief Judicial Magistrate, Chengalpattu, in Crl.M.P.No.2300 of 2024 in Spl. Case No.09 of 2013 dated 23.07.2024.

For Petitioner : Mr.P.Ezhil Nilavan

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

The petitioner herein is the sole accused in Special Case No.9 of 2013, on the file of the learned Special Judge / Chief Judicial Magistrate, Chengalpattu.



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The accused is facing trial for charges U/s.7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. He took out a petition in CrI.M.P.No.2300 of 2024, for recalling PW1, the Joint Commissioner of Police, who granted sanction U/s.19 of the Prevention of Corruption Act, 1988. This petition was dismissed by the learned Special Judge, relying upon the authority in *State of Haryana Vs Ram Mehar & Others* [(2016) 8 SCC 762] and *Yashpal Jain Vs Sushila Devi & Others* [2023 SCC Online SC 1377]. This order is now under challenge before this Court.

2.The learned counsel for the petitioner submitted that PW1 was fully cross examined on 29.07.2015, and a couple of years later, the petitioner had filed a petition U/s. 91 Cr.P.C. before the learned Special Judge for production of some documents, and the said petition was ordered by the learned Special Judge. Pursuant to which, the respondent herein made available some documents. The documents received show that prior to the complaint, based on which the present case was registered by the respondent, PW2, the complainant had preferred an identical complaint, but with certain material omission before the PW1 and it is this fact that requires to be confronted.



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3.The learned Government Advocate (Crl. Side) submitted that PW1 had superannuated sometime in 2017 and adopted the line of reasoning of the Special Court and submitted that it would be a literal harassment to summon PW1 when the petitioner had all the opportunity to examine him.

4.The learned counsel for the petitioner has literally disclosed the position, which in ordinary times ought to be wrapped in secrecy, if someone has to be cross examined, then it is to be done only for confronting a document for eliciting some contradiction and this document is made available to the petitioner only by the respondent. What is significant here is, the author of the document is PW2 and if there are any material contradictions, something which the learned counsel for the petitioner contends, then it is PW2 who must be confronted with his alleged earlier statement and no profitable purpose will be served in cross examining PW1 again.

5.There is considerable merit in the line of reasoning of the trial Court, but then whether the Court must adopt a disciplinarian attitude or not depends on the facts of each case. Admittedly here in this case, the document which the petitioner refers to was not a part of the final report and he had procured



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it only sometime in 2018. Necessarily, he would not have had the opportunity to confront either PW1 or PW2 with these documents.

6.The only point that can be raised against the petitioner is that he could have taken out an application at an earlier point of time. Taking this into account, this Court deems it appropriate to recall PW2 and not PW1, but on payment of cost of Rs.5,000/- (Rupees Five Thousand only) payable to PW2 and another sum of Rs.10,000/- (Rupees Ten Thousand only) to the Head of Department, Department of Neurology and Neuro Medicine, Government Medical College Hospital, Chengalpattu, through Dean, Government Medical College, Chengalpattu.

7.This Court now requires the prosecution to ensure that witness is brought before the Court on 27.08.2024. The trial Court is required to issue necessary summons to the witness and the petitioner will complete the cross examination of PW2 on the very same day. It is underscored that no further time will be granted nor the Special Court shall grant any adjournment, unless the Court is on leave. It is also underscored that the cross examination shall be confined only to the document that has now been



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obtained by the petitioner pursuant to the order passed U/s.91 Cr.P.C. and only to those which directly relate to PW2.

8.The petitioner is required to deposit the cost payable to PW2 before the trial Court and the same shall be disbursed by the trial Court to PW2 on the date of examination. So far as the cost imposed and required to be payable to Government Medical College, Chengalpattu is concerned, the petitioner is required to file a proof of such payment before the Special Court, Chengalpattu. The trial Court shall issue summons to the witness only after it satisfies itself that the cost has been paid.

9.This Criminal Original Petition stands disposed of accordingly.

08.08.2024

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Note: Issue order copy today.



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N.SESHASAYEE, J.

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To

1.The Special Judge
and Chief Judicial Magistrate
Chengalpattu

2.Inspector of Police
Vigilance & Anti Corruption
Chennai
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