



CRL.O.P.No.21717 of 2023 in
CRL.A.SR.No.54749 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRL.O.P.No.21717 of 2023

against

Criminal M.P. No. 639 of 2023

in Spl. S.C. No. 14 of 2022

(CC No. 01/2015)

(CNR No.TNCH06-000639-2023)

Thameem Ansari, S/o.Abdul Rahman

... Petitioner

Vs.

State Rep. By the
Superintendent of Police
Chief Investigation Officer
NIA, Hyderabad.

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order dated 16.05.2023 in Criminal M.P. No. 639/2023 in Special S.C. No.14 of 2022 (CC. No. 01/2015) (CNR No.TNCH06-000639-2023), on the file of the Special Court under the NIA Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Chennai at Poonamallee and direct the Special Court to eschew and delete the evidence illegally recorded on 20.06.2023 through



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PW45 (L.W.52) Mr.Natarajan.

For Petitioner

: Mr.C.Vijayakumar

For Respondent

: Mr.R.Karthikeyan, Special PP (NIA)

ORDER

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

Under assail is the order dated 16th May 2023 passed in Criminal M.P. No. 639/2023 in Special S.C. No.14 of 2022 (CC. No. 01/2015).

2. The order impugned passed by the Special Court is made against the objection petition filed by the accused in Special S.C. No. 14 of 2022. It is not in dispute that trial commenced in Special S.C. No. 14 of 2022 and prosecution witnesses 1 to 38 have already been examined. During the pendency of the present criminal original petition, the trial Court proceeded with examination of further witnesses and as on today, 57 witnesses are examined.

3. While examining PW45 alleged leading question was asked by the Public Prosecutor, which was objected by the learned counsel appearing on



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behalf of the accused before the Trial Court. The objection was reduced in writing by way of memo/objection petition and the said objection petition was entertained and the trial Court permitted the prosecution side to file counter-statement on the objection petition and the impugned order dismissing the objection petition was passed, which resulted in filing of the present criminal original petition under Section 482 of the Code of Criminal Procedure.

4. Mr.C.Vijayakumar, learned counsel appearing for the petitioner would submit that a fair trial is the basic right of an accused. At no circumstances the trial be allowed to be derailed by allowing the prosecution to examine new witnesses or to put leading questions on the witnesses contrary to the statement made by the witness under Section 161(3) of the Code of Criminal Procedure.

5. In the present case, surprisingly the learned Public Prosecutor presented a laptop, while examination of PW45 was in progress and shown some pictures to PW45 and asked leading questions. Under Section 141 of the Indian Evidence Act, no such leading questions can be asked by the Public Prosecutor. Therefore, on behalf of the accused, an objection petition



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was filed before the Special Court.

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6. It is contended that leading question in the present case would cause prejudice to the case of the accused. The prosecutor asked month and year of the alleged occurrence and the said details are not available in 161(3) statement given by PW45 in the instant case. Thus, in the interest of fair trial, the said portion of the deposition of PW45 is to be eschewed.

7. Mr.R.Karthikeyan, learned Special Public Prosecutor appearing on behalf of the respondent would strenuously oppose by stating that the prosecution is entitled to examine the evidence by showing some photographs. There is no prohibition or impediment for showing such photographs through videos or through laptops or through any electronic device to the witness to elicit the truth behind the statement given by such witness under Section 161(3) of the Code of Criminal Procedure Code.

8. That apart, the trial Court considered the nature of the alleged leading question asked by the learned Public Prosecutor and made a finding that the



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question asked about month and year of the alleged occurrence is not amounts to leading question. The trial Court perused the evidence of PW45 and formed an opinion that there is no leading question asked on behalf of the prosecution.

9. Recording the other objection raised, the trial Court found that those allegations are unconnected with the examination of PW45 or the alleged leading questions.

10. We have considered the arguments made on behalf of the respective parties to the *lis* on hand.

11. Section 141 of the Indian Evidence Act denotes leading questions, accordingly, “any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question”. Section 142 states that when they must not be asked. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court. Pertinently, the Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.



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Section 143 stipulates that leading questions may be asked in cross-examination. Section 165 confers Judge's power to put questions or order production. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question.

12. In the context of the above provisions, if at all any leading questions are asked by the Public Prosecutor during the course of trial, it may provide an opportunity to the accused to raise a ground during the course of final arguments. Intervention of the trial by raising such objections in writing on such alleged leading questions are not desirable as it would undoubtedly hamper the trial and on some occasions may cause prejudice to the interest of either of the parties.

13. Importantly, Section 311 of the Code of Criminal Procedure provide power to summon material witness, or examine person present. Accordingly



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"any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case".

14. Ultimate object of the justice delivery system is to meet the ends of justice. Truth cannot be buried and it must be culled out by affording opportunity to all the parties to the *lis* before the Courts. While the Court is in the process of understanding the case and culling out the truth relating to an occurrence, the Courts are empowered to ask any question summon and examine any person in the interest of justice. The amplitude of Section 311 of Code of Criminal Procedure would be sufficient to form an opinion that the power conferred on the trial Court to summon material witnesses or examine persons are intended for fair trial to meet the ends of justice.

15. In the context of the present case, the learned counsel appearing for the petitioner would submit that month and year of alleged occurrence was put as a question before PW45. However, no such details are stated by PW45 in his



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statement recorded under Section 161(3) of the Code of Criminal Procedure.

Therefore, the learned counsel appearing for the petitioner before the trial Court filed an objection petition stating that it is a leading question. The Court found that asking month and year of the alleged occurrence is not amounts to leading question. Further, the trial Court found that evidence of PW45 goes to show that no leading question was asked by the prosecution.

16. The learned Special Public Prosecutor would submit that the Trial Court considered the nature of question asked and made a finding that the said question was not a leading question. The accused frequently raises such objections during the trial, causing obstruction to speedy trial. Thus, the present petition is to be rejected.

17. Mr.Vijayakumar, learned counsel for the petitioner would submit that on certain occasions and in view of specific circumstances, the lawyers have to raise such objections, which resulted in filing of petition before the Special Courts. Since the Special Court has not considered the issue, the present petition is filed. However, such general submissions made on behalf of the



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petitioner are neither candid nor convincing.

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18. At the first instance, this Court raised a question: how an objection petition against an alleged leading question is maintainable and under what provision of law? The learned counsel for the petitioner had no answer. In the absence of any provision to entertain a petition against such nature of objections, the Special Court ought to have rejected such petition *in limine*.

19. We fear that entertaining such objection petitions during the course of trial by the Special Court, based on certain questions asked to the witnesses during the course of examination or cross-examination, will result in increasing the longevity of the trial and it is possible to obstruct free flow of trial by the accused persons. It is absolutely unnecessary for the Courts to entertain such objection petitions from the accused. Presuming that if certain leading questions are asked in the opinion of the learned counsel appearing on behalf of the accused, the said point may be taken as a ground during the course of final argument. Contrarily, entertaining petitions, adjudicate the same, and dispose of the petition by passing a detailed order during the course of trial with reference to alleged leading question would result in causing an obstruction of trial.



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20. If such practices are allowed in the absence of any provision of law, every accused in a criminal proceedings will be encouraged to file multiple petitions during the course of trial and the Courts may not be in a position to complete the trial, if such petitions are entertained. This exactly is the reason why the trials are prolonging for an indefinite period and the accused are developing an idea to increase the longevity, dilute the trial, and to escape from the clutches of criminal proceedings. Such tactics by accused persons in a criminal proceedings at no circumstances be encouraged by the Courts.

21. The procedures as contemplated under law is to be followed scrupulously. Even presuming certain mistakes are committed by the prosecution side during the examination of witness, the said mistake can be taken advantage by the accused persons during the course of final arguments. However, they must not be allowed to obstruct the free flow of trial or to increase the longevity of the litigation with an intention to dilute the case.

22. In the present case, admittedly, 57 witnesses have already been examined and the trial is in progress. As far as the present facts are concerned, we do not find any infirmity with reference to the findings made



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in the orders impugned. However, the petitioner is at liberty to cross-examine the witness in the manner known to law.

23. The trial Court is requested to proceed with the trial and dispose of the case as expeditiously as possible.

24. Accordingly, the Criminal Original Petition stands dismissed.

[S.M.S., J.] [M.J.R., J.]

20.11.2024

Maya

Index : Yes

Speaking order

Neutral Citation : Yes

To

1.The District and Sessions Judge,
Special Court under the National Investigation Agency Act, 2008,
Sessions Court for Exclusive Trial of Bomb Blast/POTA Cases,
Poonamallee, Chennai.

2.The Superintendent of Police,
State,
Chief Investigation Officer,
NIA, Hyderabad.

3.The Special Public Prosecutor,
Madras High Court.



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