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Crl.O.P. No.21411 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

CORAM : **JUSTICE N.SESHASAYEE**

Criminal Original Petition No.21411 of 2024
and Crl.M.P.No.12260 of 2024

Tmt.Sangeetha

... Appellant

Vs.

State by the Inspector of Police
Vigilance and Anti Corruption
Tirupattur
(Crime No.6 of 2013)

... Respondent

PRAYER: Criminal Original Petition filed under Section 582 of Bharatiya Nagarik Suraksha Sanhita, 2023 to call for the records on the file of Chief Judicial Magistrate, Tirupattur, in Crl.M.P. No.33 of 2024 in Spl. C.C. No.3 of 2024 and to set aside the order dated 09.08.2024 passed by the learned Chief Judicial Magistrate, Tirupattur in Crl.M.P. No.33 of 2022 in Spl.C.C. No.3 of 2024.

For Petitioner : Mr.V.Paarthiban

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



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ORDER

This petition is filed challenging an order passed by the learned Special Judge allowing a petition filed by the prosecution under Section 311 Cr.P.C. to recall PW1 to PW3. It is submitted that these witnesses were recalled by the prosecution as their testimony showed certain inconsistencies or contradictions, and that instead of declaring them hostile, the examination was allowed to continue and conclude. The purpose of the present petition now taken out by the prosecution is intended to treat these witnesses as hostile, and this prayer has been granted to the prosecution by the trial court.

2. Counter affidavit has been filed wherein it is contended that PW1 to PW3 have contradicted with each other and the prosecution has since recalled them, declared them hostile and cross examined them and hence the defence should not be granted further opportunity to cross-examine these witnesses.

3. Heard both sides and perused the materials available on record.

4. The learned counsel for the petitioner submitted that the procedure adopted by



the trial court in recalling the witnesses after the witnesses are fully cross-examined and to declare them as hostile witnesses is unknown to law. If this method is adopted, then it defeats the purpose of cross-examination in several cases. After all, the tool of cross-examination is aimed to discredit or impeach the veracity of the testimony made in the chief examination. If only the method such as this is permitted, then even a 161(3) statement can be relied on for delivering a judgment and no cross-examination be needed.

5. When the prosecution has attempted to do something very extraordinary in procedure, then the defence should not be denied its opportunity to cross-examine.

6. What has been admitted by the prosecution is unknown to procedure. For proving any fact for establishing a charge, a witness is examined in chief and then cross-examined. And if any witness does not aid the party who calls it, then under Sec.154 of the Evidence Act (now Sec.157 of BSA) the Court may permit the prosecution to cross-examine its own witnesses. Ordinarily it is termed as a witness turning hostile, and the witness is permitted to be cross-examined by the very party who had called the witness to tender evidence.



7. However in the instant case, some six years after P.W.1 to P.W.3 were cross-examined, the prosecution had come out with an application under Sec.311 Cr.P.C., (now Sec.348 BNSS) for recalling these witnesses as according to the prosecution there are certain internal contradictions in the evidence. This is plainly impermissible. If witnesses do not speak what they are expected to speak in the chief-examination, then the prosecution ought to have obtained the leave of the Court under Section 154 of the Evidence Act and cross-examined them on that aspect, and if some inconsistencies have arisen during the cross-examination, then it is open to the prosecution to ask certain clarification during re-examination. It is however impermissible for the prosecution, much less for any party to summon its own witness, merely because it was found that the witness which the party had brought to speak the facts in his or its aid leaves certain incongruencies. The beauty of cross-examination is all about bringing the internal contradictions in the testimony of the witness brought in by the prosecution and this cannot be filled up later. Cross-examination is the only weapon, the defence has to create a dent on the credibility of the prosecution witness.

8. The trial Court has egregiously erred in allowing the petition when it ought to have dismissed it. This Court would now endeavour to do what the trial Court



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ought to have done.

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9. In conclusion, this criminal original petition is allowed and the order of the learned Chief Judicial Magistrate, Tirupattur, dated 09.08.2024 in Crl.M.P. No.33 of 2022 in Spl.C.C. No.3 of 2024, is set aside. Consequently, connected miscellaneous petition is closed.

14.10.2024

Asr/ds

Index : Yes / No

Neutral Citation : Yes/No

To

1. The Chief Judicial Magistrate, Tirupattur.
2. The Public Prosecutor, High Court, Madras



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N.SESHASAYEE, J.

Asr/ds

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