



CRL.R.C.No.2077 of 2024
and Crl.M.P.Nos.16661 and 16743 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.12.2024

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MR.JUSTICE N.SESHASAYEE

Crl.R.C.No.2077 of 2024
and Crl.M.P.Nos.16661 and 16743 of 2024

C.Selvaraj

... Petitioner

Vs.

State Represented by
The Inspector of Police
Vigilance and Anti-Corruption
Namakkal

... Respondent

Prayer: Revision Case filed under Section 438 r/w 442 of BNSS Act, 2023, to call for the records in Crl.M.P.No.2 of 2024 in Special C.C.No.85 of 2013 on the file of the learned Chief Judicial Magistrate, Namakkal and set aside the same.

For Petitioner : Mr.V.R.Balasubramaniam

For Respondent : Mr.K.M.D.Muhilan
Government Advocate (Crl. Side)



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ORDER

This petition is filed challenging an order passed by the Special Court for Prevention of Corruption Act cases (the Court of Chief Judicial Magistrate), Namakkal, in CrI.M.P.No.2 of 2024 in Special C.C.No.85 of 2013. It is filed for deferring cross examination of P.W.2 after the cross examination of P.W.3. This came to be dismissed by the trial Court, and this Court understands that it is essentially because P.W.3, the defacto complainant was brought in a stretcher due to his indifferent health.

2. Every accused under the procedural law has a right to defer cross examination of witnesses for it could well be a part of its strategy. Hence, every Court should be reasonable in extending the procedural right available to an accused as liberally as possible. Merely because P.W.3, the defacto complainant, was brought in a stretcher to the Court, the Court perhaps thought it bad to recall him again.

3. This Court, finds that the indifferent health of the P.W.3 by itself may



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not be a ground to deny the petitioner the right to seek deferment of cross examination, and the solution can be easily found.

4.Mr.K.M.D.Muhilan, the learned Government Advocate (Crl. Side), submits that P.W.2 had already been cross examined, and if at all P.W.2 needs to be cross examined further, he has to be recalled U/s.311 Cr.P.C.

5.Without getting into the integrity of the same, this Court choses to allow this Revision. Since P.W.3 is stated to be ailing, the trial Court is required to ascertain from the prosecution if it will be inconvenient to bring P.W.3 again to the Court. If, however, his health does not permit, then he may be cross examined on Commission, and the trial Court is required to appoint a counsel who is regular in his Court and also relatively senior and appoint him as a Commissioner for examining P.W.3 at his residence. The petitioner is required to pay such Commissioner's batta which the trial Court may fix, and also an additional cost of Rs.10,000/- to P.W.3 for inconveniencing him. So far as P.W.2 is concerned, the petitioner is at liberty to file necessary petition U/s.311



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Cr.P.C. now U/s. 348 of BNSS Act, 2023.

N.SESHASAYEE, J.

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6.This Criminal Revision Case stands allowed accordingly. The order passed in CrI.M.P.No.2 of 2024, in Special C.C.No.85 of 2013 on the file of the learned Chief Judicial Magistrate, Namakkal is hereby set aside. Consequently, the connected miscellaneous petitions are closed.

02.12.2024

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Note: Issue order copy on 03.12.2024

Index : Yes / No

Neutral Citation

To

1.The Chief Judicial Magistrate
Namakkal

2.The Inspector of Police
Vigilance and Anti-Corruption
Namakkal

3.The Public Prosecutor
High Court of Madras
Chennai 600 104



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