



WEB COPY



CRL.R.C.No.2132 of 2024
and CrI.M.P.No.16927 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2024

CORAM

MR.JUSTICE N.SESHASAYEE

CrI.R.C.No.2132 of 2024
and CrI.M.P.No.16927 of 2024

Devaprakasam

... Petitioner

Vs.

The State
Rep. by The Inspector of Police
Vigilance and Anti-Corruption, Vellore
FIR in Crime No.03 of 2014

... Respondent

Prayer: Revision Case filed under Section 438 r/w 442 of BNSS, 2023, to call for the records culminating in the impugned order dated 17.10.2024 passed in CrI.M.P.No.11737 of 2024 in Spl.C.C.No.6 of 2015 by the Court of the learned Chief Judicial Magistrate, Vellore, Vellore District, examine the correctness, legality and propriety of the findings made therein, set aside the same.

For Petitioner : Mr.Arun Anbumani

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



CRL.R.C.No.2132 of 2024
and CrI.M.P.No.16927 of 2024

WEB COPY

ORDER

This Revision is filed challenging CrI.M.P.No.11737 of 2024 in Spl.C.C.No.6 of 2015 passed by the learned Chief Judicial Magistrate, Vellore, vide order dated 17.10.2024, which the petitioner herein has filed seeking leave of the Court to summon two doctors as witnesses on his side.

2.The petitioner as a sole accused, is now facing trial for charges U/s.7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The prosecution has concluded examining its witnesses and the Revision Petitioner himself has entered the box to defend himself and examine himself as D.W.1. Vide CrI.M.P.No.11737 of 2024, he applied to the trial Court to summon two doctors who are supposed to speak in aid of his defence. The trial Court, however, has chosen to dismiss his application on two grounds:

- a) In his cross examination, D.W.1 has left certain vacant spaces and that it cannot be filled up through other witnesses; and



CRL.R.C.No.2132 of 2024
and CrI.M.P.No.16927 of 2024

WEB COPY

b) that he had taken some 16 adjournments to bring this application.

3.Heard Mr.Arun Anbumani, the learned counsel for the petitioner and Mr.K.M.D.Muhilan, the learned Government Advocate (Crl. Side) for the respondent. In the instant case, the respondent has a very minimal role, as this proceeding essentially concerned with right of an accused to defend the charges and the authority of the Court to short circuit it.

4.This Court is given to understand that after the said 16 adjournments the petitioner's application to recall some prosecution witnesses were allowed on the leave granted by the trial Court and they were cross examined. The impugned petition under which he applied for summons to two doctors has been taken in the very next posting after his own examination as D.W1. Now, the trial Court in the opinion of this Court has fundamentally erred in two aspects:

a) It has attempted to weigh the defence strategy far too early when in law a defendant in a criminal prosecution who is in peril of losing his freedom needs to be granted optimum opportunity of



CRL.R.C.No.2132 of 2024
and CrI.M.P.No.16927 of 2024

WEB COPY

defending the charges, and therefore no Court can examine the defence strategy far too early to scuttle his right of defence in any manner. This is, however, subject to a rider whether a defendant facing a charge is abusing the procedural opportunities excessively to hamstring the trial process. That is when the Court can step into assert and discipline a litigant, but not otherwise. In this case, the petitioner has opted to examine the two independent witnesses immediately after his own examination. This on facts, the opportunity to him ought not to have been denied.

b) Turning to the other ground that the petitioner had taken 16 adjournments, but thereafter some business was still happening before the Court when the petitioner had recalled some of the prosecution witnesses and cross examined them. His turn to examine his witnesses come only thereafter.

5. The trial Court is advised not to wear the cap of the prosecutor far too early and try to presume the guilt of the accused when law mandates that



WEB COPY



CRL.R.C.No.2132 of 2024
and CrI.M.P.No.16927 of 2024

N.SESHASAYEE, J.

kas

Crl.R.C.No.2132 of 2024
and CrI.M.P.No.16927 of 2024

29.11.2024