



1 *CrI.O.P.(MD) No.9400 of 2024*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 05.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN

CrI.O.P.(MD). No.9400 of 2024

and

CrI.M.P.(MD).No.6426 of 2024

Aathimoolam

... Petitioner

Vs.

The Inspector of Police,

Vigilance and Anti-Corruption Unit,

Virudhunagar.

(Crime No.2/2012)

... Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 Cr.P.C. praying to set aside the order made in Cr.M.P.No.491 of 2024 in Spl.C.C.No.9 of 2014 dated 10.05.2024, on the file of the learned Chief Judicial Magistrate/Special Judge, Srivilliputhur, dismissing the petition to recall the witnesses.



For Petitioner : Mr.G.Mariappan

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

ORDER

The petitioner is sole accused in Spl.C.C.No.9 of 2014 on the file of the learned Chief Judicial Magistrate/Special Judge for the Prevention of Corruption Act, Srivilliputtur, filed this petition to set aside the order made in Cr.M.P.No.491 of 2024 in Spl.C.C.No.9 of 2014, dated 10.05.2024 by the learned Chief Judicial Magistrate/Special Judge, for the Prevention of Corruption Act, Srivilliputtur, dismissing the petition to recall the witnesses.

2.According to the prosecution, the petitioner is a Village Administrative Officer and he is said to have demanded bribe and received amount of Rs.1,500/- to change the patta in the name of the defacto complainant's wife. The respondent police registered a case in Crime No.2 of 2012 for the offence under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. Thereafter, they conducted the investigation and filed a final report before the Special Court and the same was taken on file in Spl.C.C.No.9 of 2014 by the



learned Chief Judicial Magistrate/Special Judge, for the Prevention of Corruption Act, Virudhunagar, at Srivilliputtur.

3.P.W.1/Sanctioning Authority was examined on 01.08.2017. On the same day, the cross examination also was made by the petitioner's counsel. Thereafter, the case was posted periodically and finally, P.W.12/Inspector of Police was examined and after completion of examination, the case was posted for arguments. At the time of argument stage, the case was repeatedly adjourned. At this stage, the petitioner filed an application under Section 311 of Cr.P.C., to recall P.W.1 and P.W.12. The said request was declined by the learned trial Judge. Challenging the same, he filed the present petition.

4.The learned counsel appearing for the petitioner submitted that during the course of cross examination, P.W.1 specifically stated that without perusal of the document, he could not answer certain questions put to him by the petitioner and when he requested certain documents from the first investigating officer, it was informed that he passed away and he wanted to make further cross examination of P.W.12. Therefore, he filed an application without any mala fide intention on his part. The



learned trial judge failed to consider his request and dismissed the petition and hence, he seeks to interfere with the order. He fairly submitted that the case was posted for arguments on the side of the defence on 08.11.2024.

5.The learned Additional Public Prosecutor on instructions, submitted that the examination was already over and the petitioner filed the petition only to prolong the proceedings at the stage of the argument. Apart from that, no bona fide reason has been stated in the petition to recall the witness. Therefore, all the witnesses were already examined long before the filing of the present petition. Hence, he seeks to dismiss the petition and he also relied the judgment of the Hon'ble Supreme Court in the case of **Vinod Kumar vs State of Punjab**, reported in (2015) 3 SCC 220 and in the case of **State (NCT of Delhi) v. Shiv Kumar Yadav** reported in (2016) 2 SCC 402.

6.This Court considered the rival submission made by the learned counsel appearing on either side and also perused the materials available on record.



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7.From the records, it is seen that the petitioner has already cross examined the witness in length and there is no ground to accept reason stated in the petition. Further the case was posted for the argument on the side of the defence on 08.11.2024 and there is no ground to recall the witnesses. The learned Trial Judge correctly dismissed the petition stating that petition filed to prolong the proceedings at the stage of the argument and this Court finds no reasons to interfere with on applying the principle laid down by the Hon'ble Supreme Court in the case of ***State (NCT of Delhi) v. Shiv Kumar Yadav, reported in (2016) 2 SCC 402.*** Relevant portion from the said judgment reads as under:-

“27. It is difficult to approve the view taken by the High Court. Undoubtedly, fair trial is the objective and it is the duty of the court to ensure such fairness. Width of power under Section 311 CrPC is beyond any doubt. Not a single specific reason has been assigned by the High Court as to how in the present case recall of as many as 13 witnesses was necessary as directed in the impugned order. No fault has been found with the reasoning of the order of the trial court. The High Court rejected on merits the only two reasons pressed before it that the trial was hurried and the counsel was not competent. In the face of rejecting these grounds, without considering the hardship to the witnesses, undue delay in the trial, and without any other cogent



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reason, allowing recall merely on the observation that it is only the accused who will suffer by the delay as he was in custody could, in the circumstances, be hardly accepted as valid or serving the ends of justice. It is not only matter of delay but also of harassment for the witnesses to be recalled which could not be justified on the ground that the accused was in custody and that he would only suffer by prolonging of the proceedings. Certainly recall could be permitted if essential for the just decision but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary “for ensuring fair trial” is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including uncalled for hardship to the witnesses and uncalled for delay in the trial. Having regard to these considerations, we do not find any ground to justify the recall of witnesses already examined.”

8. Therefore, this Court is inclined to dismiss this petition.

Accordingly, this criminal original petition is dismissed by confirming the order made in Cr.M.P.No.491 of 2024 in Spl.C.C.No.9 of 2014 dated



7 *Crl.O.P.(MD) No.9400 of 2024*

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10.05.2024, by the learned Chief Judicial Magistrate/Special Judge, Srivilliputhur. Consequently, the connected criminal miscellaneous petition is closed.

05.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
vsg

To

1. The Inspector of Police,
Vigilance and Anti-Corruption Unit,
Virudhunagar.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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8 *Crl.O.P.(MD) No.9400 of 2024*

K.K.RAMAKRISHNAN, J.

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