



CrI.OP(MD).No.17866 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2024

CORAM:

THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN

CrI.OP(MD)No.17866 of 2024

and

CrI.MP(MD)No.11031 of 2024

V.Rathakrishnan

... Petitioner / Respondent

vs.

The State represented by its,
The Deputy Superintendent of Police,
Vigilance and Anti-corruption,
Theni.
(In Crime No.5 of 2017)

... Respondent / Petitioner

PRAYER: Criminal Original Petition filed under Section 528 of B.N.S.S, to set aside the order in Cr.M.P.No.5943 of 2024 in Spl.C.No.3 of 2017 dated 19.09.2024 passed by the learned Special Judge for Prevention of Corruption and Vigilance/Chief Judicial Magistrate Court, Theni, Theni District, and set aside the same by allowing the Criminal Original Petition.

For Petitioner : Mr.A.R.Jeya Rhuthran

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



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ORDER

The accused in Spl.C.No.3 of 2017 on the file of the learned Special Judge for Prevention of Corruption and Vigilance/Chief Judicial Magistrate Court, Theni, Theni District, has filed this petition, challenging the order, passed in Cr.M.P.No.5943 of 2024, dated 19.09.2024, which was filed by the prosecution under Section 311 of Cr.P.C., to re-call P.W.1 for the purpose of re-examination.

2. According to the prosecution, P.W.2 is the owner of one 'Sudharson Enterprises for Farm Equipment' and also the recognised dealer for 'V.S.T Tillers Tractors Ltd.,' Bangalore based Company, which is engaged in selling of Agriculture improving equipment under Government Subsidy Scheme. The petitioner was working as an Assistant Engineer at the office of the Agriculture Engineering, Theni Sub-division, Theni, from 11.07.2014 to 09.03.2015. He is said to have demanded and accepted an amount of Rs.25,000/- from P.W.2 for issuing Demand Draft and subsidy cheques to the tune of Rs.2,24,500/- to P.W.2, who sold out agriculture improving equipments to nine farmers under subsidy scheme.



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Since, P.W.2 is not willing to give bribe amount, he went to the respondent and gave oral information. The respondent police, who received the same conducted a trap and the petitioner was caught red handed while attempting to get bribe. Thereby, they registered the First Information Report in Crime No.5 of 2017 for the offences under Sections 7 & 13(2)(d) r/w 13(1) of Prevention of Corruption Act. Thereafter, final report was filed in Spl.C.No.3 of 2017 before the learned Special Judge for Prevention of Corruption and Vigilance/Chief Judicial Magistrate Court, Theni, Theni District, after obtaining a sanction from P.W.1. P.W.1 was examined on 12.07.2018. On the same day, cross-examination was also conducted. The prosecution also re-examined P.W.1 with the permission of the Court, on 12.07.2018 itself. Thereafter, the trial was completed and the case was posted for the submission of the argument. The petitioner also submitted a written argument. In the written argument, he took a stand that there was no application of mind while granting sanction to the prosecution to prosecute the accused and there was no application of mind in Ex.P.1, the sanction order. There is serious lacuna in issuing the sanction order. The same was elicited by the petitioner



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during the cross-examination of the said P.W.1/Sanctioning Authority.

After seeing the written argument, the prosecution filed an application before the trial Court under Section 311 of Cr.P.C., and thereafter, the petitioner opposed the application by filing a detailed counter. However, the learned trial Judge has allowed the application on 19.09.2024, by relying upon a precedent in the case of **Varsha Garg Vs. State of Madhya Pradesh and Others** reported in **2022 SCC Online SC 986**. Hence, the petitioner filed this petition.

3. The learned counsel for the petitioner reiterated the averments made in the counter and also argued that the application was filed to fill up lacunae to nullify the favourable answer elicited by the petitioner during the cross-examination of P.W.1. The cross-examination was already completed on 12.07.2018. Thereafter, an application was filed under Section 311 Cr.P.C., after a lapse of 7 years. But, however, the trial Court has also allowed the application in order to erase the favourable answer elicited by the petitioner through P.W.1. In the said circumstances, he seeks to set aside the order passed by the trial Court.



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4. The learned Additional Public Prosecutor appearing for the respondent further submitted that it is true that there is a delay on the side of the prosecution in filing the petition under Section 311 Cr.P.C., But, the language used in Section 311 Cr.P.C., is that at any time before pronouncing judgment, such a petition can be filed and he wants to clarify certain aspects with regard to grant of sanction. Therefore, the learned trial Judge after applying his mind allowed the application, and this Court has no jurisdiction to interfere with the order passed by him. To support of his contention, he also placed reliance of the judgment in **Varsha Garg Vs. State of Madhya Pradesh and Others** reported in **2022 SCC Online SC 986**. In the said circumstances, he prayed for dismissal of this petition.

5. This Court considered the rival submissions and perused the materials available on records.

6. On going through the language of provision under Section 311 Cr.P.C, it is permissible to file a re-call petition at any point of time before pronouncing the judgment. In view of the said circumstance, this



Court is duty bound to see *if there are bonafides* on behalf of the prosecution with regard to delay in filing the petition under Section 311 Cr.P.C., and thus is one aspect. But the necessity to establish the offence is another aspect. Hence, the learned trial Judge considered the necessity to re-call the witness in order to clarify certain aspects, relating to the application of mind while granting sanction and also another aspect relating to the granting of sanction. The said aspects were properly considered by the learned trial Judge.

7. The Division of the Hon'ble Supreme Court of India in the case of **State Vs. N.Seenivasagan** reported in **(2021) 14 SCC 1** in paragraph No.12 has held as follows:-

“12. In our view, having due regard to the nature and ambit of Section 311 of the Cr.P.C., it was appropriate and proper that the applications filed by the prosecution ought to have been allowed. Section 311 provides that any court may, at any stage of any inquiry, trial or other proceedings under Cr.PC, 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'. The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case.”

8. In the said judgment, similar contention was raised by the learned counsel for the petitioner in a vigilance case and in the said judgment also, the prosecution filed 311 Cr.P.C., petition after the commencement of the defence side argument. In the said judgment, it was mentioned that the true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case. The said judgment is squarely applicable to the facts of the present case.

9. In the said circumstances, the clarification relating to the some of the answer elicited during the course of the cross-examination is



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necessary to arrive at a just decision of the case and hence, the learned trial Judge, correctly allowed the application. Further, except the delay in filing the application, there is no ground to dismiss this petition. Hence, this Court is not inclined to accept the argument of the learned counsel for the petitioner and the same deserve to be rejected.

10. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

20.11.2024

NCC : Yes/No

Internet: Yes

Speaking/Non-Speaking order

dss

Note : Issue order copy on 21.11.2024

1. The Special Judge for Prevention of Corruption and Vigilance/Chief Judicial Magistrate Court, Theni, Theni District.

2. The Deputy Superintendent of Police, Vigilance and Anti-corruption, Theni.

3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J.

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