



Crl.O.P.No.2651 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2025

CORAM :

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,  
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

Crl.O.P.No.2651 of 2025

1. R.Devadoss  
2. S.Saraswathy

.. Petitioners

Vs.

The Assistant Director  
Director of Enforcement  
Government of India  
Ministry of Finance, Department of Revenue  
Shastri Bhavan  
3<sup>rd</sup> Floor, 3<sup>rd</sup> Block  
No.26, Haddows Raod  
Chennai 600 006.

.. Respondent

Prayer : Petition filed under Section 428 of Cr.P.C./under Section 528 of B.N.S.S. to call for the records culminating in Crl.M.P.No.3528 of 2023 in C.C.No.3 of 2014 on the file of Principal Sessions Judge, Chennai, Special Court constituted under Section 43 of the Prevention of Money Laundering Act, 2002 and set aside the order dated 08.06.2023.



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For Petitioners : Mr.Ali Hassan Khan  
For Respondent : Mr.Rajinish Pathiyil  
Special Public Prosecutor

ORDER  
(Order of the Court was made by  
the Hon'ble Chief Justice)

The order dated 08.06.2023 passed by the trial Court, allowing prosecution application for examination of nine more witnesses, is assailed mainly on the ground that initially, when the charge sheet was filed, the prosecution had enlisted only two witnesses to be examined as prosecution witnesses to prove the predicate offences, however, during the course, Crl.O.P.No.28716 of 2021 was filed, wherein, this Court, by order dated 16.10.2014, quashed the criminal case insofar as the alleged commission of offence under Sections 406 and 420, IPC (FIR No.391 of 2010) is concerned. Though SLP has been filed, there is no interim order.

2. Case of the petitioner is that during trial, application under Section 311 Cr.P.C. was filed by the prosecution seeking to examine



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nine more witnesses without stating sufficient grounds as to why those witnesses were not included as witnesses. The application was also stated to be blissfully vague as it does not contain any averments as to how these witnesses were involved, whether their statements under Section 161 or otherwise were recorded or how they were relevant witnesses to prove the case of the prosecution in respect of other predicate offences. By the impugned order dated 08.06.2023, the trial Court, taking into consideration the nature of accusation and the submission of the prosecution, has allowed the application giving rise to this petition under Section 482, Cr.P.C. (as it then was prior to amendment by which, now old Act has been substituted as B.N.S.S.).

3. Assailing the correctness and validity of the order passed by the trial Court, learned counsel for petitioners would submit that there was not only undue delay, but there was hardly any explanation offered by the prosecution while submitting application seeking inclusion of more witnesses as prosecution witnesses, also seeking to examine certain witnesses who are alleged to be



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witnesses to prove allegations pertaining to criminal case in relation to FIR No.391 of 2010 which stands quashed.

4. It is further contended that the trial Court, while allowing application by the impugned order, did not apply its mind and allowed to examine even those witnesses who are not concerned with those predicate offences in respect of which the trial is presently going on.

5. Allowing prosecution's application mechanically to examine more prosecution witnesses, long after the criminal case was registered and trial began, would result in endless proceedings and would thus amount to abuse of process of law.

6. On the other hand, learned counsel for respondent would submit that though the offences were initially registered in the year 2010, concerning several offences under different crime numbers, investigation was completed and charge sheet was filed in the year 2014. The delay in completion of trial was mainly because of an



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interim order passed in Crl.O.P.No.20299 of 2017, which was finally concluded on 13.07.2020. Thereafter, due to Corona, there was no material progress in trial. Application under Section 311, Cr.P.C. was filed on 13.02.2022 seeking permission to examine most material witnesses, details of which have been given in the application itself.

7. The application itself shows how those persons are material witnesses for the prosecution case. Therefore, only on the ground as to how those persons were involved during the course of investigation and whether their statements were recorded, would not, in any manner, restrict the power of the criminal court trying the offence to examine new witnesses, even though they may not have been initially included as witnesses in the charge sheet.

8. On the third aspect with regard to inclusion of two witnesses, namely D.K.Adhikari and G.Nagarajan, who essentially are related to Crime No.391 of 2010 is concerned, learned State counsel would fairly submit that since the predicate offence in this



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regard stands quashed, but as the matter is pending in the Supreme Court, they would be awaiting the verdict of the Supreme Court and depending upon the verdict, these witnesses may be examined by the prosecution in case occasion so arises.

9. We have heard learned counsel for the parties and perused the contents of the application filed under Section 311, Cr.P.C. and also the order impugned passed by the trial Court on 08.06.2023.

10. The grounds of challenge to the order under Section 311 is three fold.

10.1. The first ground relates to the delay. In this regard, we find that the charge sheet was filed after the completion of investigation in the year 2014. Filing of charge sheet in respect of an allegation of commission of offence in 2010 was not assailed in any Court of law. While the trial was being conducted, Crl.O.P.No.20299 of 2017 was filed before the Court seeking to challenge the very jurisdiction of the Court to try the offence. An interim order was passed and criminal petition remained pending



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until it was finally dismissed on 13.07.2020. Therefore, it cannot be said that because of the reasons attributable to the failure on the part of the prosecution, the trial was delayed.

10.2. It is common knowledge that Court can take judicial notice of the fact that the date on which Crl.O.P.No.20299 of 2017 was dismissed, that was the period when the Court proceedings were also paralysed due to onset of Covid pandemic. The application for examination of additional nine witnesses was filed on 01.03.2022. Therefore, it cannot be said that there was any inordinate delay on the part of the prosecution or that at a very advanced stage of trial, when it was about to conclude, an application was filed.

10.3. As regards the other reason that the application seeking to examine additional witnesses did not show any relevance as to how the material witnesses would prove the case of prosecution, a perusal of the application under Section 311, Cr.P.C. would show that the prosecution has given in detail the reasons therefor in



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paragraph 5 of the application, which is re-produced herein below:

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*“5. The Petitioner submits that the Defacto complainants in the predicate offence and other witnesses were not included in the list of witnesses annexed to the present complaint. Further, the Sub-Inspector who has registered the aforementioned FIRs and the Sub-Registrar, who registered those properties, which were acquired out of proceeds of crime, were also not included as witnesses in the instant case. Those witnesses mentioned herein below are very essential witnesses to unfold the true story of the entire incident and for reaching a just decision in the above case by this Hon’ble Court. The Petitioner should not be deprived in the above case, his valuable right of examining the said witnesses to prove his case and this could be ensured only when the above persons are issued with summons to be examined as a witness. If the below mentioned witnesses are examined, it will not change the nature of the case against either of the parties and no prejudice will be caused to the respondents. The additional witnesses are as follows:*

*(i) Shri. S.Vivek, S/o. Shri Sivasamy (Complainant in FIR No.277/2010).*



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(ii) *Shri. D.K.Adhikari, Deputy Manager, Indian Oil Corporation, (Complainant in FIR No.391/2010).*

(iii) *Shri M.Sathyanarayana, (Complainant in FIR.No.350/2010).*

(iv) *Shri S.Kalyanasundaram (Complainant in FIR No. 349/2010).*

(v) *Shri G.Madhavan (Husband of the 2<sup>nd</sup> Respondent/Accused2).*

(vi) *Shri N.Kumar, Sub-Inspector of Police, E-3 Minjur Police Station (Related to FIR 277/2010)*

(vii) *Shri G.Nagarajan, Inspector of Police, E-3 Minjur Police Station (Related to FIR 391/2010)*

(viii) *Shri C.Shanmugam, Sub-Inspector of Police, E-3 Minjur Police Station (Related to FIR 349/2010 & 350/2010)*

(ix) *Shri P.Sundar (Sub-Registrar Thiruvottiyur, Chennai)”*

10.4. A perusal of the same would show that the application for examination of additional witnesses was not baseless or without any material. Beyond that, in proceedings under Section 311,



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Cr.P.C, the Court would not be required to go into details as to whether those witnesses, if at all examined, would be reliable or not.

10.5. The order which has been passed by the trial Court on 08.06.2023 takes into consideration the contents of the application under Section 311, Cr.P.C. filed by the prosecution.

11. The legal position with regard to powers of the Court to direct presence of any other witnesses or re-examination of the witnesses already examined is no longer *res integra*. We may usefully refer to the decisions of the Supreme Court in the case of **Zahira Habibu H S v Stat o Gujarat<sup>1</sup>** and **Rajaram Pr Yadav v Stat o Bihar<sup>2</sup>**.

12. In the case of **Zahira Habibu H S** (supra), the Apex Court has held as under:

*“43. The Courts have to take a participatory role in a*

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<sup>1</sup> (2004) 4 SCC 158

<sup>2</sup> (2013) 14 SCC 461



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*trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence-collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary where the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.*



44. *The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Court to examine a witness if his evidence appears to be essential to the just decision of the Court. Though the discretion given to the Court is very wide, the very width requires a corresponding caution. In Mohan Lal v. Union of India (1991 Supp (1) SCC 271) this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the word such as, 'any Court' 'at any stage', or 'any enquiry or trial or other proceedings' 'any person' and 'any such person' clearly spells out that the Section has expressed in the widest-possible terms and do not limit the discretion of the Court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates*



*and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case “essential”, to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the Court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.*

*45. It is not that in every case where the witness who had given evidence before Court wants to change his mind and is prepared to speak differently, that the Court concerned should readily accede to such request by lending its assistance. If the witness who deposed one way earlier comes before the appellate Court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier*



*lapse, the Court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case, accept it. It is not that the power is to be exercised in a routine manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the Court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice. The Court can certainly be guided by the metaphor, separate the grain from the chaff, and in a case which has telltale imprint of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and the acceptability of the same on merits of the material sought to be brought in.*

*46. Ultimately, as noted above, ad nauseam the duty of the Court is to arrive at the truth and subserve the ends of justice. Section 311 of the Code does not confer on any party any right to examine, cross-examine and re-examine any witness. This is a power given to the Court not to be merely exercised at the bidding of any one party/person but the*



*powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by Courts to power under this section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision in the case.'*

13. The Supreme Court, in the case of **Rajaram Pr Yadav** (supra), has held as under:

*“17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311, Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:*

*17.1. Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?*

*17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment*



*should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.*

*17.3. If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.*

*17.4. The exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.*

*17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.*

*17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.*

*17.7. The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him*



*for further examination in order to arrive at a just decision of the case.*

*17.8. The object of Section 311 CrPC simultaneously imposes a duty on the Court to determine the truth and to render a just decision.*

*17.9. The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.*

*17.10. Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.*

*17.11. The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest*



*manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.*

*17.12. The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.*

*17.13. The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.*

*17.14. The power under Section 311 CrPC must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as*



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*well as a human right.”*

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13. In conclusion, we are of the view that the order passed by the trial Court in allowing the prosecution to examine more witnesses does not suffer from any patent illegality nor can it be said to be abuse of process of law.

14. However, there are two witnesses, namely G.Adhikari and G.Nagarajan, who apparently are the witnesses which the prosecution intends to examine to prove predicate offences relating to Crime No.391 of 2010. It is an admitted position as on record that the predicate offences in connection with Crime No.391 of 2010 has since been quashed by this Court in Crl.O.P.No.28716 of 2010 by order dated 16.10.2014. Though SLP is pending, there is no interim order. Therefore, no trial may be conducted in respect of those offences. Obviously, there will be no requirement for the prosecution to presently examine the two witnesses D.K.Adhikari and G.Nagarajan as prosecution witnesses. However, it will be open for the trial Court to proceed to examine all other witnesses who



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have been allowed as prosecution witnesses vide order dated 08.06.2023.

15. In the result, petition is partly allowed only to the extent of inclusion of D.K.Adhikari and G.Nagarajan is concerned subject to the observations made herein above.

16. For many reasons beyond control, the trial, which was initiated way back in 2014, has been pending since long time. Therefore, the trial Court is directed to expeditiously conclude the trial without granting any unnecessary adjournment to any of the parties. Prosecution witnesses once produced in Court shall be examined and no adjournment be granted to any of the parties.

(MANINDRA MOHAN SHRIVASTAVA, CJ) (G.ARUL MURUGAN,J)  
14.11.2025

Index : Yes/No  
Neutral Citation : Yes/No

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To

The Assistant Director  
Director of Enforcement  
Government of India  
Ministry of Finance, Department of Revenue  
Shastri Bhavan  
3<sup>rd</sup> Floor, 3<sup>rd</sup> Block  
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