



Crl.O.P.No.3665 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2025

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.3665 of 2025

and

Crl.M.P.No.2422 of 2025

1.A.Shamshat

Junior Assistant, Taluk Office,
Katpadi, Vellore District.

2.A.Ayub Ali

... Petitioners/A1 & A2

Versus

The State Represented by
The Inspector of Police,
Vigilance and Anti-Corruption,
Vellore.

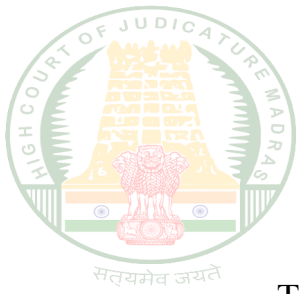
... Respondent

PRAYER: Criminal Original Petition filed under Section 528 of BNSS, praying to set aside the order dated 10.09.2024 made in C.M.P.No.7453 of 2024 in Spl.C.C.No.8 of 2014 on the file of the learned Chief Judicial Magistrate, Vellore.

For Petitioners : Mr.E.Sathiyaraj

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl. Side)

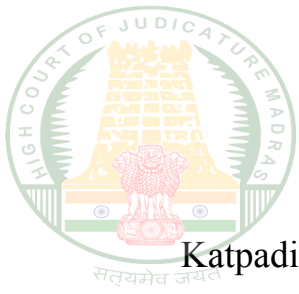
ORDER



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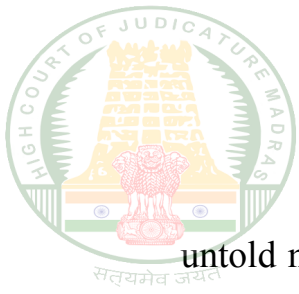
The petitioners/A1 & A2, who are facing trial in Spl.C.C.No.8 of 2014 for offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act r/w 108 of I.P.C., had filed a petition under Section 311 of Cr.P.C. to recall and cross examine PW2, PW4, PW5, PW10, PW11, PW12, PW13 and PW14 in C.M.P.No.7453 of 2024. The trial Court, by an order dated 10.09.2024, dismissed the petition, against which, the present petition.

2.The contention of the petitioners is that in this case the decoy/PW2 not identified the petitioners as the person, who made demand and received bribe amount. PW2 not supported the case of the prosecution, hence, declared hostile. In view of foundational fact is not proved, the evidence of other witnesses became innocuous and of no consequences. Further, in this case, PW4 is the accompanying official witness to PW2 from the Commercial Tax Department. PW5 is the Deputy Tahsildar, who was the head of the office on the date of trap, in whose presence the recovery proceedings and seizure of documents and Registers in Exs.P9 to P15 made. PW10 is the Junior Assistant and PW11 is the Assistant working in the Tahsildar office, Katpadi on the date of trap. In their presence hand wash and recovery of trap amount is projected. PW12 is the Inspector of Police, All Women Police Station,



Katpadi. Since the first petitioner is a lady, for her arrest, the woman Police officer examined. She further states about the seizure of Personal Register, Distribution Register, Special Register and part of the recovery proceedings. PW13/Assistant, Katpadi Tahsildar Office, who also speaks about the hand wash and recovery of the documents. PW14 is the Trap Laying Officer, who arranged the trap, conducted trap and made recovery of the trap amount and seized various registers and documents in the presence of witnesses.

3.It is submitted that the petitioners engaged a counsel, who is aged around 98 years, an elderly person and leading member of the Bar. He could not attend the Court due to corona restrictions and health ailments. Hence, his junior filed a petition before the trial Court for deferring the cross examination of certain witnesses and for some witnesses it is recorded there is no cross examination. Due to the health impediments and for collection of certain documents and materials, the cross examination could not be done then and there. He further submitted that in this case the first petitioner joined service only a year and few months prior to the trap and since her probation not declared, she was suspended and thereafter, even the subsistence allowance not paid all these years. The first petitioner finding it very difficult to defend her case and to meet out the cost. The first petitioner had undergone



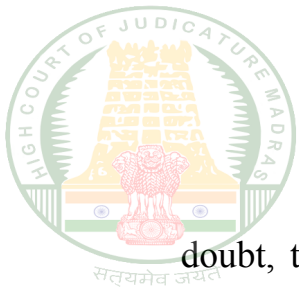
untold misery and sufferings and if the cross examination of the witnesses is denied, great prejudice would be caused and the evidence of the witnesses would go unchallenged and it would be violation of Article 21 of the Constitution of India.

4.The learned Government Advocate (Crl. Side) strongly opposed the petitioners' contention stating that the first petitioner demanded bribe amount from PW2/decoy/de-facto complainant for issuance of combined certificate for her son's employment on compassionate ground on the death of her husband. Without understanding the difficulty faced by the de-facto complainant, bribe amount was demanded and later it was reduced and paid. The first petitioner called her brother, the second petitioner to collect the bribe amount and later gives an explanation that amount was voluntarily handed over by the de-facto complainant. He further submitted that PW2 not supported the case of the prosecution but the official accompanying witness/PW4 clearly deposed about the demand, acceptance and recovery of the bribe amount from the petitioners. PW5, PW10, PW11 and PW13 are the witnesses, who are in the office of the Tahsildar, Katpadi in whose presence recovery, hand wash and seizure of documents took place. PW12 is the Woman Inspector and the arrest of A1 was made in her presence and some



recovery also made and PW14 is the Trap Laying Officer. He fairly submitted that all the witnesses are official witnesses and despite the witnesses were examined years before, the petitioners not thought fit to cross examine then and there. The case was kept pending for years together, due to non co-operation of the petitioners and hence, opposed this petition.

5.Considering the submissions made and on perusal of the materials it is seen that petitioners found to be received the bribe amount from the de-facto complainant. In this case, de-facto complainant not supported the case of the prosecution. Hence, the recovery gains significance. PW4 is the accompanying witness and the only witness for the demand and acceptance. The other witnesses, namely, PW5, PW10, PW11, PW12 and PW13 are the witnesses for the hand wash, recovery of the trap amount as well as seizure of records. In this case, the defence taken by the petitioners is that the first petitioner not received any bribe amount and the amount was given to the second petitioner voluntarily and the first petitioner was forced to handle the trap amount, which is said to be taken from the table drawer of the first petitioner. Hence, cross examination of the above witnesses would be necessary in the interest of justice. Further the evidence of witnesses would be complete only after they are tested by way of cross examination. No



doubt, there is a delay but delay alone would not amount to denial of fair chance. It is seen that PW15 is in the box and the next hearing date is fixed on 11.03.2025. The learned counsel for the petitioners undertakes to cross examine the witnesses without any delay as and when they are produced for cross examination, further, the entire process can be completed within a short period.

6.Since PW2 not supported the case of the prosecution and turned hostile, there is no necessity for the petitioners to recall and cross examine PW2. The evidence of witnesses will be complete only when their evidence is tested by cross examination and it would be beneficial for the Court to arrive at a just decision.

7.In view of the same, the impugned order passed in C.M.P.No.7453 of 2024 in Spl.C.C.No.8 of 2014 dated 10.09.2024 by the learned Chief Judicial Magistrate, Vellore, is set aside and petitioners are permitted to recall the witnesses, namely, PW4, PW5, PW10, PW11, PW12, PW13 and PW14 for the purpose of cross examination. The said exercise to be completed expeditiously, preferably within a period of one month from the date of



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receipt of a copy of this order.

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8. With the above observations and direction, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

20.02.2025

Index : Yes/No
Neutral citation: Yes/No
Speaking order/Non-speaking order
rsi

Note: Issue order copy on 24.02.2025.



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To

- 1.The Inspector of Police,
Vigilance and Anti-Corruption,
Vellore.
- 2.The Chief Judicial Magistrate,
Vellore.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

rsi

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