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Crl.R.C.(MD)No.886 of 2025



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 17.07.2025

CORAM:

THE HONOURABLE Dr.JUSTICE R.N.MANJULA

Crl.R.C.(MD)No.886 of 2025

Selvarani

...Petitioner

vs.

State,
Through its Additional Superintendent of Police,
C.B.I., SC II,
New Delhi.

...Respondent

PRAYER : Criminal Revision Case filed under Section 438 r/w 442 of BNSS praying to direct the learned I Additional District and Sessions Judge, Madurai to conduct the Court proceedings by accepting the Memo filed by the respondent to dispense with the witnesses in the light of Section 230 of Cr.P.C. to enable to conclude the trial within a time frame.

For Petitioner : Mr.V.Rajiv Rufus

For Respondent : Mr.C.Muthusaravanan
Special Public Prosecutor

ORDER

This Criminal Revision Case has been filed to direct the learned I Additional District and Sessions Judge, Madurai to conduct the trial proceedings by accepting the Memo filed by the respondent to dispense



the witnesses as stated by the prosecution in the light of Section 230 of Cr.P.C. to ensure a speedy trial.

2. The petitioner has filed a writ petition in W.P.(MD)No.3665 of 2021 to direct the learned I Additional District and Sessions Judge, Madurai to conclude the trial in S.C.No.470 of 2020 within a stipulated period. As the trial could not be concluded within the stipulated period, it appears that each time extension of time has to be sought by stating various reasons as to why the trial could not be conducted expeditiously. This Court has also granted further time.

3.1. This case involves an infamous case alleging gruesome custodial torture of one Jayaraj and one Benniks at Sathankulam Police Station, Thoothukudi District. The petitioner is the defacto complainant, who is the wife of deceased Jayaraj and mother of deceased Benniks. With much difficulty, the First Information Report has been filed and considering the seriousness and the interest of the local Police, the case has been transferred to CBI for investigation.

3.2. After completion of the investigation, charge sheet has been filed and the case was taken on file in S.C.No.470 of 2020. During trial,



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PW1 to PW52 were examined on the side of the prosecution. As the proceedings are dilated due to repeated adjournments for cross examination or for various reasons, an order has been passed on 17.06.2025 by granting further extension of time to complete the proceedings with certain observations and directions. When the trial is almost going to be completed, it appears that the learned Trial Judge has chosen to issue summons for many witnesses who have been dispensed by the prosecution from examination.

4. Mr.V.Rajiv Rufus, learned counsel appearing for the petitioner submitted that on a Memo filed by the respondent CBI on 08.07.2025 seeking permission to dispense the remaining witnesses, since the prosecution has decided that the examination of those witnesses is not necessary.

5. But the Trial Judge has not chosen to accept the Memo and passed an order summoning all the left out witnesses on the apprehension that it might cause injustice. It is seen that the Trial Judge has observed that if the non-examination of any other witnesses results in injustice, the Special Public Prosecutor and Investigation Officer shall take responsibility and they are answerable to the High Court and Apex Court

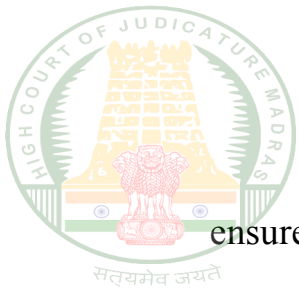


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and even in the absence of the prosecution producing the witnesses by serving summons, the Court itself will summon and see the witnesses examined. Aggrieved over the same, this case has been filed.

6. Mr.C.Muthusaravanan, learned Special Public Prosecutor appearing for the respondent submitted that there are many witnesses cited on the same point. It is prerogative of the Public Prosecutor to choose to examine certain witnesses and file a Memo to dispense the rest of the witnesses. It is time old practice that the Public Prosecutor incharge of conducting the prosecution cases shall choose to dispense certain witnesses, if in his estimate the witness is going to repeat the statement already given by some of the witnesses before the Court. The above practice is not only to save the precious time of the Court, but also to avoid the witnesses who have been bargained to become hostile.

7. For any failure on the part of the Prosecutor or the Investigation Agency and if the case of the prosecution is defeated, there is check and balance mechanism available in the concerned Departments and the Court cannot assume the role of keeping surveillance or control on the prosecution agency, unless it is specifically ordered by the Court due to any extraneous consideration. In other words, the Court's role is to

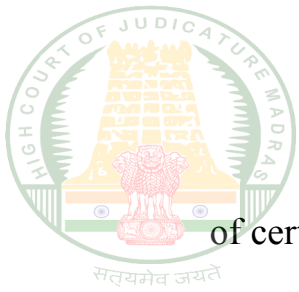


ensure justice by conducting a fair trial without being a mute spectator.

At the same time, the Courts cannot be allowed to do any over assumption affecting the independency or autonomy of the prosecution. When the prosecutor think it fit to stop certain witnesses or form an opinion with the help of available materials that the chances of proving the case of the prosecution is bright, the Court need not fret much and insist the Prosecutor to produce witnesses even if they had been sought to be dispensed. No doubt, the defence has the right to summon those witnesses dispensed by the prosecution and examine them as defence side witnesses.

8. The opinion about the tendency of the witnesses whether they are going to support or subvert the case of the prosecution cannot be taken by the Court. There are several reasons why the Prosecutor would choose to skip the witnesses from being examined. If the defence is not convinced with the dispensing of such witnesses, it is open to the defence to cite them and examine those witnesses as defence side witnesses.

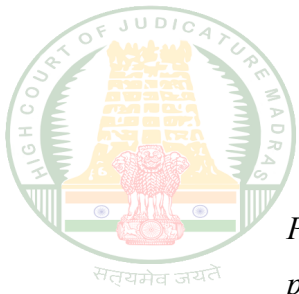
9. In this regard, it is appropriate to refer the Judgement of the Apex Court in the case of **Banti Alias Guddu vs. State of Madhya Pradesh reported in (2004) 1 SCC 414**, wherein it is held that relieving



of certain prosecution witnesses to reduce repetitive evidence would save the time of Court and lessen its work load. It is further observed that the decision taken by the prosecution should be in a fair manner as he can know well in advance which of the witnesses are going to be dispensed. Even during the course of trial, such decisions are often taken by the prosecution depending upon the situation. So, it cannot be fair on the part of the Court to pressure the Prosecutor or the Investigation Agency to bring the witnesses whom they chose to dispense. It is appropriate to extract the relevant paragraphs of the above Judgement hereunder.

"12. In trials before a Court of Session the prosecution "shall be conducted by a Public Prosecutor". Section 226 of the Code of Criminal Procedure, 1993 (for short 'the Code') enjoins on him to open up his case by describing the charge brought against the accused. He has to state what evidence he proposes to adduce for proving the guilty of the accused. If he knew at that stage itself that certain persons cited by the investigating agency as witnesses might not support the prosecution case he is at liberty to state before the Court that fact. Alternatively, he can wait further and obtain direct information about the version which any particular witness might speak in court. If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for prosecution.

13. When the case reaches the stage envisaged in Section 231 of Code the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear from the said section that the



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Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the persecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetition depositions on the same factual aspects. That principle applies when there are too many witnesses cited, if they all had sustained injuries at the occurrence. The Public Prosecutor in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload. Time has come to make every effort possible to lessen the workload, particularly those courts crammed with cases, but without impairing the cause of justice.

14. The situation in a case where the persecution cited two categories of witnesses to the occurrence, one consisting of persons closely related to the victim and the other consisting of witnesses who have no such relation, the Public Prosecutor's duty to the Court may require him to produce witnesses from the latter category, also subject to his discretion to limit to one or two among them. But if the Public Prosecutor got reliable information that any one among that category would not support the prosecution version he is free to state in court about that fact and skip the witness from being examined as a prosecution witness. It is open to the defence to cite him and examine him as a defence witness. The decision in this regard has to be taken by the Public Prosecutor in a fair manner. He can interview the witness beforehand to enable him to know well in advance the stand which that particular person would be adopting when examined as a witness in court."



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10. At this juncture, the learned Special Public Prosecutor submitted that the prosecution is not bound to produce each and every other witnesses irrespective of the consideration whether such witnesses are essential to unfold the narrative on which the prosecution case is based. In support of the above submission, reliance was made on the Judgement of the Apex Court in the case of **Rajbir vs. State of Haryana reported in 1996 SCC (Cri) 178.**

11. In this context, it is relevant to extract Section 231 of Criminal Procedure Code hereunder.

"231. Evidence for prosecution.—(1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination. "

12. As per the above provision, the Trial Court is bestowed with the duty to take the evidence that may be produced in support of the prosecution. If the Court deems it fit, it can pin point and ask the prosecution whether any specific witness is required to be examined for the purpose of establishing any particular fact. In such case, it would be



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possible for the Prosecutor also to decide on the same by getting more information. But, it appears that the trial Court has summoned all the left out witnesses whom in the opinion of the Prosecutor are not required for examination. The above order is in direct violation of the earlier observations of the Apex Court on the liberty given to the prosecutor to choose his witnesses.

13. The petitioner is the defacto complainant and she has also got no grievance for the prosecutor to drop certain witnesses listed in the charge sheet and to proceed with the case only with those witnesses whom the prosecution thought it fit to be brought and examined before the Court.

14. By the orders dated 03.07.2025 and 08.07.2025, the Court appears to have not only compelled the Public Prosecutor to bring and examine the witnesses whom he did not wish to examine, but also ignored the position of law and the clarification offered by the Apex Court in this regard in various Judgements.

15. Though the Court need not be a mute spectator and pass orders as and when necessary to meet the ends of justice, the Court is not

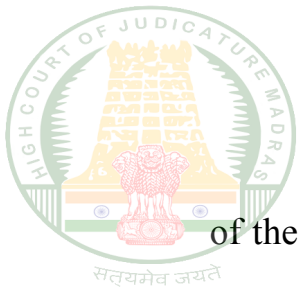


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expected to be hyper reactive or apprehend about the decisions taken by the Public Prosecutor in choosing prosecution witnesses to be examined before the Court. It would have been a different story if the defacto complainant come and presents a petition saying that her valuable right to seek justice is lost in view of any bias or over sighted decisions taken by the Public Prosecutor in dispensing the examination of certain witnesses. The Court need not imagine the prejudice without having the time devoted to examine the witnesses so far brought by the prosecution.

16. The case is not only serious but also invited various directions from this Court for earlier disposal and is pending on the file of I Additional District and Sessions Court, Madurai for more than 5 years. Several Judges who have been functioning in the Trial Court from time to time have conducted trial part by part and it appears that the trial is almost coming to closure. At this juncture, in the name of protecting justice, the Court is not expected to dilate the proceedings by getting into the shoes of the Prosecutor and also by ignoring the settled proposition of law in respect of Sections 230 and 231 of Cr.P.C.

17. In fact, the order of the Court to summon all the witnesses who have been dispensed by the prosecution has caused anxiety in the mind



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of the defacto complainant, who had rushed to this Court by anticipating uncertainty due to elongation of the proceedings. The interest of justice has got several facets and the Court is expected to strike a balance without being either underactive or hyperactive and the orders of the Court should align with the purpose. The Court is not expected to put any obstacles in any short sighted manner or with any inhibition to complete the trial in a time frame manner. Hence in the interest of justice, appropriate directions are needed to be issued to the Court to allow the Prosecutor to exercise his discretion to dispense the witnesses whom he does not want to examine and issue summons only for those witnesses whom the Prosecutor considers necessary to be examined in terms of Section 231 of Cr.P.C. In case the defacto complainant raises any doubt as to the genuineness on the part of the prosecution agency, she may raise her objection and seek appropriate remedy.

18. In view of the same, the Criminal Revision Case is **allowed** and the interim orders dated 03.07.2025 and 08.07.2025 issuing summon to all the remaining witnesses and rejecting the Memo filed by the Public Prosecutor are set aside. The learned I Additional District and Sessions Judge, Madurai is directed to proceed with the trial as how it has been progressing and conclude the trial and dispose the case in S.C.No.470 of



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2020 within the time already granted by this Court in W.P.(MD)No.3665
of 2021 without any further delay.

17.07.2025

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To

1.The I Additional District and Sessions Judge,
Madurai.

2.The Additional Superintendent of Police,
C.B.I., SC II,
New Delhi.

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



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Dr.R.N.MANJULA, J.

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