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(2011) 08 MAD CK 0389

Madras High Court (Madurai Bench)

Case No: Criminal O.P. (MD) No. 10286 of 2011

Shanmugam @  
Shanmugavadivelu

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Aug. 17, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 311
- Prevention of Corruption Act, 1988 - Section 13(1)(2), 7

**Hon'ble Judges:** R. Mala, J

**Bench:** Single Bench

**Advocate:** A. Thiruvadikumar, for the Appellant; K.V. Rajarajan Government Advocate (Crl. Side), for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

The Honourable Ms. Justice R. Mala

1. The Petitioner who is arrayed as A2 in Special Case No. 3 of 2005 on the file of the Special Judge cum Chief Judicial Magistrate, Thanjavur at Kumbakonam, has come forward with the present application to set aside the order dated 19.07.2011 made in Cr.M.P. No. 655 of 2011, dismissing the application filed u/s 311 Code of Criminal Procedure., for recalling the witness P.W. 3.

2. The Learned Counsel appearing for the Petitioner/A2 would submit that the Petitioner was charged under Sections 7 and 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988. He would further submit that even though all the witnesses were examined, he has not cross-examined P.W. 3 Kannan and hence, he has filed a petition in Cr.M.P. No. 655 of 2011 before the Special Court, for recalling the witness P.W. 3., but, the learned Special Judge has dismissed the application stating that the

Chief examination of P.W. 3 has been done on 06.04.2006 and he was cross examined on 21.01.2008 by A1 and the above petition has been filed only on 19.07.2011 and there is a delay in filing the application. Against the said order, the present application has been filed by the Petitioner.

3. Heard the learned Government Advocate (criminal side).

4. Considering the submissions made on either side and perusing the record would show that charge sheet has been filed on 04.03.2005 against the Petitioner and the case has been taken on file in Special Case No. 3 of 2005 and the Petitioner was arrayed as A2 and one Vaithilingam was arrayed as A1. The Petitioner is a Village Assistant and the charge has been framed against him on 11.04.2005. P.W. 3 was examined on 06.04.2006 and the cross examination A1 has been done on 21.01.2008. But, at that time, the Petitioner herein has not cross-examined P.W. 3. Admittedly, the Petitioner herein has not cross-examined the witness and he kept quiet all along and only on 19.07.2011, at the time of argument, he has filed the application for recalling the witness P.W. 3.

5. At this juncture, the Learned Counsel appearing for the Petitioner would submit that an opportunity must be given to him. It is true, a fair opportunity to be given to the Petitioner. But, considering the gravity of the offence, the case is pending from 2005 and P.W. 3 was examined on 06.04.2006 and subsequently, P.W. 3 has been examined by A1 on 21.01.2008 and on that day, the Petitioner has not come forward to cross examine the same. While perusing his affidavit, he never stated why he was not able to cross examine the witness and no reason has been made. Hence, it is clearly proved that only to drag on the proceeding and to delay the disposal of the case, he waited for a long period of 5 years and now he has come forward with the application for recalling the witness to cross examine.

6. Considering the same, I am of the view that repeatedly, it was held by the Apex Court that cases of this nature i.e. Prevention of Corruption Act to be disposed of at the earlier point of time. In the present case, an opportunity has been given even on 06.04.2006, but the Petitioner has not cross examined the witness P.W. 3 and at the time when he was cross examined by A1 21.01.2008 also, the Petitioner has not cross examined him and no reason has been assigned.

7. In such circumstances, I do not find any merits in this application. furthermore, he has not mentioned as to why he has not cross examined the witness on particular dates and the trial Court has come to the conclusion that the defence is one and the same. Considering all these things, I am not inclined to allow the application and the Petitioner is devoid of merits and the petition is dismissed.