

**IN THE COURT OF THE SPECIAL COURT FOR TRIAL OF CASES UNDER
PREVENTION OF CORRUPTION ACT, SIVAGANGAI**

**PRESENT : N.Senthil Murali, B.Sc., M.L.,
Special Judge,
Special Court for Trial of Cases under
Prevention of Corruption Act, Sivagangai.**

Wednesday the 6th day of March 2024

Crl.M.P.No.22/ 2024

(CNR No.TNSV10-000022-2024)

in

Spl.C.C.No.73/2014

(CNR No.TNSV01-0000042-2014)

Tr.Meenakshisundaram.

...Petitioner/Accused

- Vs -

State through the Inspector of Police,
Vigilance and Anti Corruption,
Sivagangai.

...Respondent/Complainant

This petition was taken on file on 23.01.2024 and came up for final hearing before this court on 05.03.2024 in the presence of Tr.M.Mohanasundaram, advocate for the petitioner/accused and Special Public Prosecutor Tr.V.Ravi for the respondent/complainant, on hearing the arguments of both sides and upon perusing the case records and having stood over for consideration till this day, this court delivers the following ...

ORDER

This Petition is filed under section 311 of Code of Criminal Procedure seeking to recall PW4 Tr.Sampath, the official witness for the purpose of cross examination on the side of the Petitioner/Accused.

1. Brief averments of the Petition :-

That PW4 Tr.Sampath, the official witness was examined in chief on 27.12.2023. On the said date the senior counsel for the petitioner since had gone out of station for his personal work and so he was not able to cross examine the said witness. Such non cross examination on the side of the petitioner is not wanton but an act of god. The cross examination of the said witness is very much essential, hence it needs to be allowed.

2. Brief averments of the Counter Objections :-

That PW4 was examined in chief on 27.12.2023 but he was not cross examined by the petitioner/accused in spite of due opportunity given by this court. The reason adduced by the petitioner is not plausible. In view of the decision of the Hon'ble Apex Court in Vinod Kumar -Vs- State of Punjab 2015 (1) MLJ (CrI.) 288 any witness has to be cross examined on the date of chief examination itself. The petitioner has flagrantly violated the said dictum. The reason assigned by the petitioner is explicitly barred under section 309 of Cr.P.C. The petitioner is trying to procrastinate the proceedings of this case and it is prejudicial to the prosecution case. Hence it is required to be dismissed.

3. The point for consideration :-

Whether this petition has got to be allowed ?

Rival submissions heard. No oral and documentary evidences were adduced on either side.

4. The Point :-

On perusal of the deposition of PW4 Tr.Sampath the official witness was examined in chief on 27.12.2023 and there was no cross examination on the side of the defence. The reasons for non cross examination of the said witness assigned by the defence is that the senior counsel representing the petitioner/accused had been to out of station for his personal work and that it was not a wanton act.

4.1. The point that the senior counsel for the accused had been to out of station for his personal work which rendered him unable to cross examine the witness cannot be a ground for deferring the cross examination of the said witness. Further the petitioner has not appeared to have taken any steps either to defer the cross examination or seeking an adjournment for the same by way of filing an application in spite of the fact that he was informed by the court of his right of cross examination.

4.2. The contention of the learned Special Public Prosecutor that in view of the dictum laid down by the Hon'ble Apex Court in ***Vinod Kumar's*** case referred to above the witnesses have to be cross examined on the same day of their chief examination. Indeed this court is bound to follow the above law. But PW4 being the official witness who assisted the trap laying officer, if not subjected for cross

examination on the side of the accused by way of providing a fair opportunity it would not serve the cause of justice. The reason assigned by the petitioner/accused for non cross examination of PW4, in the circumstances of this case is found to be sustainable and justifiable. In order to give fair trial to the petitioner it becomes inevitable in the interest of justice to provide yet another opportunity for examination of PW4 so as to enable him to establish his defence. Nevertheless by bringing back the said witness would cause hardship to him, in order to meet out such hardship it would be proper for this court to order for cost, which shall be payable by the petitioner to PW4.

In the result,

i) that this petition is allowed,

ii) that the petitioner/accused shall pay the cost of Rs.1,500/- for PW4

Tr.S.Sampath on his appearance before this court for cross examination,

iii) that the petitioner/accused shall complete the cross examination of the witness on the date of his appearance itself without asking for any further adjournment, lest his right of cross examination would be forfeited.

Dictated to the Steno Typist, typed by him in the computer, printout taken,
corrected and pronounced by me in open court on the 6th day of March, 2024.

Special Judge,
Special Court for Trial of Cases under
Prevention of Corruption Act,
Sivagangai.