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CrI.R.C.527 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15 / 11 / 2024
Delivered on	06 / 12 / 2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.527 of 2021 &
CrI.M.P.No.8606 of 2021

1.Deepu
2.M.Satheesan
3A.Santhosh Samy

... Petitioners

Vs.

1.The State, Rep. by
Inspector of Police,
Shollumattam Police Station,
The Nilgiris.

2.Sayan
3.Manoj @ Valaiya Manoj
4.Jamsheer Ali
5.Bijin @ Kutty @ Jinesh
6.Udhayan @ Udhayakumar
7.Manoj @ Samy
8.Jithin Joy

... Respondents

Prayer: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C. to set aside the partially dismissed portion of the common order passed by the learned Sessions Judge at the Nilgiris in CrI.M.P.No.292 of 2021 in S.C.No.2 of 2018, dated 03.04.2021.

For Petitioners : Mr.I.Romeo Roy Alfred
For Mr.K.Vijayan
For Respondents : Mr.S.Vinoth Kumar
Government Advocate (Criminal Side)
for R-1



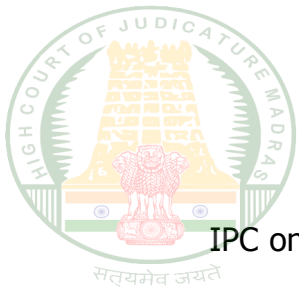
ORDER

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This Criminal Revision has been filed to challenge the order passed by the learned Sessions Judge, Nilgiris, in Crl.M.P.No.292 of 2021 in S.C.No.2 of 2018, dated 30.04.2021, filed by petitioners/accused 3, 5, and 8.

2. The brief facts of the prosecution case are as follows:

On 23.04.2017, Mr.Krishna Dhaba, the de facto complainant, was on duty as a security guard at the Kodanadu Estate Bungalow in Kotagiri, which belonged to former Chief Minister Selvi Dr.J.Jayalalithaa. At around midnight, he was attacked by eight individuals, who used deadly weapon like knives to assault him. They choked him, tied his hands and legs, and sprayed an unknown substance on his face that caused him to faint. After losing consciousness, the defacto complainant was left immobilized. Around 1:00 a.m. on 24.04.2017, upon regaining consciousness, Mr.Krishna Dhaba noticed the accused escaping in their vehicles. He found that Mr.Om Bagathur, the security guard at Gate No.10, had been murdered and his body was found upside down on a tree nearby. Additionally, the windows and door of the bungalow were found broken. The defacto complainant informed the security personnel at Gate No.7, who subsequently contacted Mr.Radhakrishna, the division writer. The defacto complainant then rushed to the hospital, where he made a statement to the first respondent Police, which led to the registration of FIR No.158 of 2017 under Sections 324, 342, 449, and 396 of



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IPC on 24.04.2017. Following the investigation, a final report was filed before the learned Judicial Magistrate and taken on file subsequently committed to the learned Sessions Judge, which is taken on file in S.C. No.2 of 2018, which is currently pending trial.

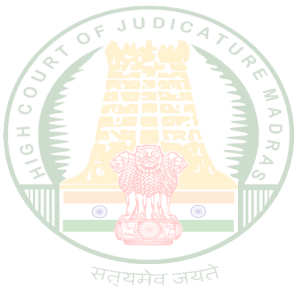
3. Pending trial, the first accused in S.C.No.2 of 2018 filed Crl.M.P.No.293 of 2021 seeking permission to examine witnesses 1 to 9, and similarly, the petitioners (accused 3, 5, and 8) filed Crl.M.P.No.292 of 2021 for the same purpose. Both petitions were heard by the learned Sessions Judge, Nilgiris, who partly allowed both petitions by the order dated 30.04.2021. Challenging order in Crl.M.P.No.292 of 2021, the petitioners/accused 3, 5, and 8 have now filed the present revision case.

4. The learned counsel for the petitioners submits that the fundamental rights of the accused to lead evidence in his defense, as guaranteed under Section 233 of Cr.P.C. and the failure of the trial court to properly appreciate and consider the importance of these witnesses in substantiating the accused's defense, are highly arbitrary. Section 233 of the Cr.P.C. clearly provides that, after the prosecution has closed its case, the accused has the right to lead evidence in his defense. It is the duty of the trial court to allow the accused to present witnesses or documents that could help establish the truth or exonerate them. The right to lead evidence in



defense is a fundamental aspect of the right to a fair trial, which is enshrined in Article 21 of the Constitution of India, which guarantees the right to life and liberty, including the right to a fair and just procedure. This provision ensures that the accused has an opportunity to contest the charges against them effectively and fully, by producing relevant evidence and witnesses. In the present case, the learned Sessions Judge erred in denying the accused the right to examine material witnesses. The learned Sessions Judge dismissed the request to examine these witnesses in a mechanical and cursory manner, without properly weighing the significance of their potential testimony. This action of dismissing the defense's application without adequate consideration of the facts violates the principles of natural justice and the right to a fair trial. Therefore, the petitioner's right to lead evidence to substantiate their defense and establish their innocence has been unjustifiably hindered.

5. The learned counsel for the petitioners further submits that the learned Judge failed to consider the sensitivity of the case, wherein the second respondent/first accused came forward in digital media to depose about the involvement of the former Chief Minister of Tamil Nadu. However, the learned Judge dismissed the petition in a mechanical manner, without adequately addressing the seriousness of the allegations.



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6. The learned counsel would further point out that the Investigating Officer deposed that the prime accused in the case was the late Kanagaraj, the driver of the former Chief Minister. Remarkably, within three days of the crime, Kanagaraj was killed in a road accident. The investigating officer conducted the investigation in a lethargic manner, allowing the culprits to go scot-free. He would also draw attention to the material object recovered by the first respondent police, a rhinoceros miniature made of glass. This object, which was purportedly recovered from the accused, is entirely irrelevant to the charges of dacoity with murder under Section 396 of the Indian Penal Code. The fact that such a trivial item was presented as a material object in a serious criminal case raises questions about the integrity of the investigation. The recovery of such an object appears to be an attempt by the police to fill up gaps in their investigation and potentially to cover up more significant evidence. The learned Sessions Judge should have questioned the relevance of this recovery and the police's motivations behind it. The fact that this was treated as a key piece of evidence further suggests bias and incompetence on the part of the investigation.

7. Moreover, the learned counsel for the petitioners emphasizes that the premises where the crime occurred were under the control of Smt.Sasikala Natarajan and Tmt.J.Elavarasi following the death of Selvi Dr.J.Jayalalithaa. Both of these individuals would have first-hand knowledge



of the articles and valuables that were present at the scene of the crime and could testify about any missing items or discrepancies. These witnesses are critical to understanding what happened to the property after the crime and whether any tampering or misappropriation took place. The defense submitted a clear request for the examination of these witnesses, yet the learned Sessions Judge failed to issue the necessary process to bring them before the court. This failure to examine crucial witnesses who could provide material information about the crime scene constitutes a serious miscarriage of justice.

8. The witnesses were essential to be examined on behalf of the defense, but the learned judge rejected their relevance on the grounds of vexatious, without providing any valid reason. According to the learned counsel, the witnesses are highly relevant for the following reasons:-

(i) The first witness, Thiru. Edappadi K. Palanisami, sought to be examined by the petitioners on the side of the defense, stating that at the time of the Kodandadu incident, which took place in April 2021, there was an ongoing power struggle within the AIADMK between the two rival factions led by Edappadi K. Palanisami (EPS) and O.Panneerselvam (OPS), following the death of the party's iconic leader, J.Jayalalithaa, in 2016. During this period, Edappadi K. Palanisami was serving as the Chief Minister of Tamil Nadu, having assumed office in February 2016 and continuing in power until May



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2021. He also held the position of General Secretary of the AIADMK after the party's General Council meeting in 2021, which addressed leadership issues within the party. Furthermore, it is submitted that, in relation to the death of J.Jayalalithaa, a commission headed by Justice Arumugam was appointed to investigate the circumstances surrounding her passing. Additionally, since the incident occurred in the bungalow of the former Chief Minister Selvi J. Jayalalithaa, and at the time of her death, Edappadi K. Palanisami, who was holding the position of Minister, it is likely that he would have accompanied the Chief Minister whenever Selvi J. Jayalalithaa visited Kodanad. Therefore, he may be familiar with the bungalow, and hence, the examination of Edappadi K. Palanisami as a defense witness is deemed necessary.

(ii) The petitioners further sought to examine three witnesses, viz., Mrs.V.K.Sasikala Natarajan, Mrs.Elavarasi, and Mr.N.V.Sudhakaran as the second, third, and fourth witnesses, respectively. It is stated that that Mrs.Sasikala Natarajan is closely related to both Mrs.Elavarasi and Mr.N.V.Sudhakaran. Specifically, Mrs.Elavarasi is Sasikala's sister-in-law, and Mr.N.V.Sudhakaran is her nephew. Both Mrs.Elavarasi and N.V.Sudhakaran have been involved in several legal battles and controversies, including their conviction in the disproportionate assets case alongside Mrs.Sasikala and the Late Selvi.J.Jayalalithaa. The petitioners contend that Mrs.Sasikala Natarajan's testimony is crucial, particularly regarding the bungalow in



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question. Mrs.Sasikala is known to have spent considerable time at the bungalow and had a close association with the late Chief Minister Jayalalithaa. To support this, the petitioners refer to the deposition of P.W.41, Thiru. S. Balasundaram, who testified that during the cross-examination of accused 4, 6, 7, and 9, it was revealed that upon entering the bungalow, one would pass through the office room and proceed upstairs, on the right side was the Chief Minister's room, while on the left was Sasikala Natarajan's room. This testimony lends weight to the argument that Sasikala is closely associated with the bungalow, where the occurrence took place. The petitioners also highlight that Mrs.Elavarasi and Mr.N.V.Sudhakaran, being close relatives of Mrs.Sasikala, and accompanied with Mrs.Sasikala while visiting Kodanadu, are essential defense witnesses in this matter. Therefore, they contend that the examination of Mrs.V.K.Sasikala Natarajan, Mrs.Elavarasi, and Mr.N.V.Sudhakaran as defense witnesses is necessary for the proper adjudication of the case.

(iii) The next witnesses sought to be examined by the petitioners are Mr.Shankar, I.A.S., and Mr.Murali Rambah, I.P.S., as the fifth and sixth witnesses, respectively. It is contended that at the time of the incident, Mr.Murali Rambah, I.P.S., was the Superintendent of Police, The Nilgiris District, and on the particular date of the incident, all security arrangements were withdrawn for some reason. The reason for the withdrawal of security arrangements needs to be ascertained. Additionally, Mr.Shankar, I.A.S., who



would have visited the bungalow when the Chief Minister arrived, would have knowledge of the bungalow. Further, with regard to details related to the withdrawal of security arrangements on that specific date. Therefore, their examination as defense witnesses is deemed necessary.

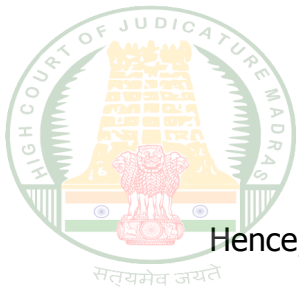
(iv) The next witnesses sought to be examined by the petitioners are Mr.Sajeevan, State Organizer of AIADMK, Mr.Natarajan, Manager, Kodanad Estate and Mr.Sunil, State Organizer of AIADMK Varthaga Ani, Mel Gudalur, Gudalur Post, The Nilgiris. Regarding Mr.Natarajan, Manager, the learned Judge has ordered that he should be examined as a defense witness. However, Mr.Sajeevan, State Organizer of AIADMK, and Mr.Sunil, State Organizer of AIADMK Varthaga Ani, Mel Gudalur, Gudalur Post, The Nilgiris, hold significant positions within the AIADMK. They would have been very familiar with the bungalow, and whenever the Chief Minister arrived at the bungalow, as party members, they would also have been present. Therefore, they should also be examined as defense witnesses.

9. The learned counsel would further submit that in accordance with Section 233 of the Cr.P.C., the trial court is obligated to issue process for the summoning of witnesses requested by the accused, unless the application is found to be vexatious, delayed, or would otherwise defeat the ends of justice. In the present case, the defense's request to summon the material witnesses



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was neither vexatious nor intended to delay the proceedings. These witnesses are directly relevant to the facts in dispute and could have provided essential testimony to support the accused's version of events. The learned Sessions Judge's failure to allow their examination violated the mandatory provisions of Section 233 Cr.P.C. and deprived the accused of an effective defense. Furthermore, the first respondent police have failed to recover statements from key witnesses who could have testified about the scene of the crime and the situation at the premises after the death of Selvi Dr. J. Jayalalithaa. These witnesses, who were in charge of the property after the incident, are in a unique position to testify about the inventory and condition of the premises following the crime. Their testimony would have been invaluable in clarifying several missing links in the investigation and establishing whether any important evidence was tampered with or removed. The police's failure to record these statements raises serious doubts about their bias and the quality of the investigation. The learned counsel submits that the learned Sessions Judge has failed to give due regard to the material evidence that could be brought before the court. The refusal to allow the examination of these key witnesses is tantamount to preventing the accused from presenting a fair defense, which is a violation of the accused's rights and contrary to the principles of natural justice. However, the trial court dismissed the request to summon this witness in a perfunctory and mechanical manner, thus denying the accused the opportunity to prove their case and uncover the hidden facts.



Hence, the learned counsel prays to set aside the impugned order and direct the trial court to allow the defense to examine the material witnesses as requested, and ensure that the trial proceeds in accordance with the principles of fairness, justice, and the rights of the accused.

10. The learned Government Advocate (Criminal Side) appearing for the first respondent-Police would submit that the learned Sessions Judge has acted within the limits of the Criminal Procedure Code and in the interest of justice ensuring that the trial proceeds in a fair, efficient, and timely manner. The application made by the petitioners to examine additional witnesses should be rejected as it lacks merit, does not fulfill the requirements of Section 233 of the Cr.P.C., and is designed to delay the proceedings without any material or substantive benefit to the defense. The learned Sessions Judge has rightly exercised his discretion in refusing to summon the witnesses requested by the petitioners. According to the learned Government Advocate (Criminal Side), as per Section 233 of the Cr.P.C., the accused has the right to lead evidence after the prosecution has concluded its case. However, this right is not absolute and is subject to the procedural requirements and the discretion of the court. The law does not mandate the summoning of every witness that the accused wishes to examine; it only mandates that the accused be given a fair opportunity to present his defense. The trial court is empowered to refuse the request for witnesses if it



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determines that the evidence sought to be led is irrelevant, unnecessary, or would unnecessarily delay the proceedings. In the present case, the witnesses sought to be examined by the petitioners have not been shown to possess any relevant or material evidence that would significantly affect the outcome of the case. The learned Sessions Judge has rightly exercised the discretion in rejecting the petition to examine these witnesses as vexatious and without merit. The mere fact that the accused has requested the examination of these witnesses does not establish their relevance to the defense, especially when their testimony would not alter the essential facts of the case. Hence, the learned Government Advocate (Criminal Side) prays for dismissal of the Criminal Revision Case.

11. Heard the learned counsel on either side and perused the materials available on record.

12. The case of the prosecution is that the accused conspired to trespass into the Kodanadu Estate Bungalow of former Chief Minister Selvi J. Jayalalithaa, located in The Nilgiris District. Pursuant to this conspiracy, on 23.04.2017, the accused and their associates formed an unlawful assembly, trespassed onto the premises with deadly weapons, committed dacoity, and murdered one Om Bhadur, a watchman, while causing multiple injuries to another watchman, Krishna Thapa. After committing the offence, the group



fled the scene in two cars. Based on a complaint from Krishna Thapa, the police registered a case in Crime No.158 of 2017 under Sections 324, 342, 449, and 396 of the Indian Penal Code on 24.04.2017.

13. The evidence adduced by P.W.41, Mr.S. Balasundar, the investigating officer, is crucial for understanding the certain facts of the case. On 29.04.2017, while reviewing the details of those involved in the crime, the officer checked the crime list. Based on the available information, an inquiry was conducted into the third accused, Deepu; the eighth accused, Santhoshsam; the fifth accused, Sadeesan; and the seventh accused, Udayan. These individuals admitted to their involvement and were arrested around 1 p.m. in the presence of V.A.O. Mosas and the Village Assistant, Nataraj. At approximately 2 p.m., Deepu gave a confession statement. As per the confession, at around 3:30 p.m., the following items were recovered: an Innova car (KL 53 C 9666), a Gionee mobile phone, a Karbonn mobile phone, a Micromax mobile phone, five Samsung mobile phones, and a 3¾ kg glass rhinoceros miniature. This rhinoceros miniature had been stolen and was the missing item from the bungalow. However, while the rhinoceros miniature was recovered, the watch that was also reported as missing has not yet been found.



14. Before delving into the case, it is necessary to note that after the registration of the case against the accused persons under Sections 324, 342, 449, and 396 of the IPC on 24.04.2017 in Crime No.158 of 2017, the subsequent events took place as follows:

(i) After five days from the occurrence on 23.04.2017, the prime accused, Mr. Kanagaraj, died in an accident on 28.04.2017 at about 20:45 hours at Attur, Salem District. In this regard, on the complaint of his elder brother, Mr.Dhanapal, a case was registered at Attur Police Station in Crime No.269 of 2017 under Sections 379 and 304(A) of the IPC on 29.04.2017.

(ii) The day after the death of Mr.Kanagaraj, another accused, Mr.Sayan, met with an accident at Kannady near Palghat in Kerala. In the accident, his wife and daughter died on the spot, and Mr.Sayan was seriously injured and taken to the hospital for treatment. In this connection, on the complaint of Mr.Baskaran, a case was registered at the Palghat South Traffic Police Station in Crime No.425 of 2017 under Sections 279 and 304(A) of the IPC on 29.04.2017. After the completion of the investigation, charges were framed on 23.08.2017, and the case was registered as C.C.No.185 of 2017 by the learned Chief Judicial Magistrate, Palghat, and the case is now pending.

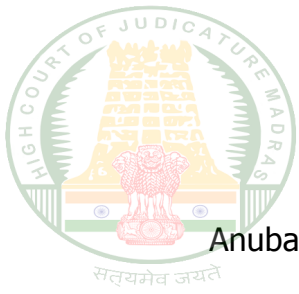
(iii) Two months after the incident, Mr.Dinesh Kumar, a Junior Assistant at Kodanad Estate, committed suicide by hanging himself on July 3,



2017, at his residence in Kengarai Village, Kothagiri, Nilgiris District. A case was registered at Sholumattam Police Station, Crime No. 250 of 2017, under Section 174 of the Cr.P.C. on the same day, based on a complaint filed by his father, Mr.Bojan.

(iv) Upon completing the investigation in Sholumattam Police Station, Crime No. 158 of 2017, the then Inspector of Police, Mr.Balasundaram, filed a final report under Sections 120(B), 147, 148, 149, 447, 449, 458, 324, 342, 395 read with 397 and 396, and 302 read with 120(B) of the IPC before the learned District Munsif cum Judicial Magistrate Court, Kothagiri. The case was taken on file in P.R.C. No. 2 of 2017 and committed to the learned District Sessions Judge, Nilgiris District. The case was subsequently taken on file as S.C.No.2 of 2018 by the learned District and Sessions Judge, Nilgiris District.

(v) The first accused, Mr.Sayan, who escaped from the accident while his wife and daughter died, had sent a letter dated 29.07.2021 to the learned Sessions Judge and to the Investigating Officer, namely, the Inspector of Police, Kothagiri, claiming that he wanted to disclose certain new facts related to the case. Based on this representation, a memo was filed by the Investigating Officer on 13.08.2021, informing the learned Sessions Court that the prosecution intended to conduct further investigation under Section 173(8) of the Cr.P.C. Challenging the further investigation, one Mr. Ravi @



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Anubav Ravi filed a petition in CrI.O.P.No.15030 of 2021 seeking a direction for the completion of the trial. This Court dismissed the petition vide an order dated 27.08.2021, and an appeal was filed before the Hon'ble Apex Court. The Hon'ble Apex Court also dismissed the appeal on 07.09.2021, as it was withdrawn by the petitioner, Ravi.

15. With the aforementioned facts, this Court will now delve into the case at hand, particularly the case involved in Section 233 of the Cr.P.C., which reads as follows:-

"233. Entering upon defence. - (1) Where the accused is not acquitted under section 232 he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice."

The provision in Sub-section (1) of Section 233, Cr.P.c., is undoubtedly a very salutary provision which is mandatory in nature and intended to protect the interests of the accused person. Under this provision, an accused person is entitled to be reminded of his right to adduce evidence in support of his defense. Sub-section (2) of Section 233 states that if the accused puts in any written statement, the Judge shall file it with the record. This provision



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ensures that any written statement made by the accused is preserved and becomes part of the record. Sub-section (3) of Section 233 deals with the accused's right to apply for the issue of process for compelling the attendance of witnesses or the production of documents or things. According to this provision, the learned Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

The application filed by the accused Nos.3, 5, and 8 for permitting them to examine the nine witnesses, the learned Judge, except for Mr.Natarajan, Manager, Kodanadu Estate, Kodanadu, rejected the others, holding as under:-

"14. As far as listed witnesses 10 to 14 Thiru.Edappadi Palanisamy, Hon'ble Chief Minister of TamilNadu, Tmt.Sasikala Nataraja, Smt.J.Elavarasi, Mr.N.V.Sudhakaran are concerned, the petitioners/accused Nos.3,5,8 have not given any reasons as to why they wanted to examine these witnesses as defense side witness. Among them, the witness No.10 Thiru.Edappadi Palanisamy, being the present Chief Minister of the State, the accused cannot just like that abuse the process of the Court to summon the Chief Minister as a defense witness without any relevancy. Therefore, this attempt made by the accused is highly vexatious and in the absence of any relevancy, this Court is of the view that the petitioners/accused Nos.3,5,8 cannot be permitted to summon them as defense side witnesses.

15. Further, the reason as stated by the accused during the course of argument, for summoning the listed witnesses Nos.11 to 13 Tmt.Sasikala Natarajan, Smt.J.Elavarasi, Mr.N.V.Sudhakaran is that they have title and interest in the property i.e., Kodanad Estate where the alleged incident had



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happened. Obviously, no materials have been produced before this Court to show that they have any title or interest over the Kodanad Estate property. It is not the case of the petitioners that they were either present during the time of occurrence. Therefore, this Court finds no reason to permit the petitioners/accused Nos.3,5,8 to examine these witnesses No.10 to 14 and the same stands rejected as vexatious.

16. Similarly, the petitioners/accused Nos.3,5,8 wanted to summon the listed witnesses Nos.14 and 15 viz., Thiru.Shankar, I.A.S., Former District Collector of Nilgiris and Mr.Murali Rambah, I.P.S., Former Superintendent of Police, Nilgiris. For summoning them also the accused have not given any reason. Therefore, the same stands rejected.

17. As far as the listed witnesses No.16 and 18 Sajeeven, State Organizer, AIADMK, Gudalur and Sunil State Organizer, Gudalur are concerned, they are AIADMK Organizers and even for examining them as witnesses, the accused have not given any valid and proper reason. Therefore, this Court is of the view that there will be no use in examining the listed witnesses No.16 and 18, and therefore, the same also stands rejected."

16. A perusal of the learned Judge's findings reveals that the request of the petitioners to examine the aforementioned witnesses was rejected on the grounds of lack of relevancy, vexatiousness, and failure to provide valid reasons.

17. The primary contention of the learned counsel for the petitioner is that there were suspicious circumstances surrounding the entire case, and that the first respondent-the Police diverted the case into a theft and murder investigation, potentially to protect certain individuals. In order to uncover the



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hidden facts and shed light on the true picture, the accused persons have filed the petition to permit them to examine the listed witnesses. However, the learned Judge failed to uncover the true intentions and facts behind the crime by dismissing the petitioners' prayer to examine the witnesses they had sought to call as defense witnesses.

18. Now, this Court will proceed to analyze the facts and submissions made by the learned counsel to determine whether the reasons advanced by the learned counsel for the petitioners are sufficient to warrant permitting them to examine the listed witnesses on the defence side.

19. The first witness sought to be examined by the petitioners on the defense side is Mr.Edappadi K. Palanisami, the then Hon'ble Chief Minister of Tamil Nadu. The learned Judge held that the petition to examine Mr.Edappadi K. Palanisami as a witness was vexatious and filed without the necessary materials. Furthermore, being the current Chief Minister of the State, the petitioners cannot abuse the process of the Court by summoning the Chief Minister as a defense witness without any relevance. It is the contention of the learned counsel that there was an ongoing power struggle within the AIADMK between the factions led by Edappadi K. Palanisami and O.Panneerselvam following the death of the party's iconic leader, J.Jayalalithaa, in 2016. Although this Court does not wish to delve into the political rivalry, it is essential to determine whether the petitioners have



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shown sufficient reason to examine the listed witness as a defense witness under Section 233 of Cr.P.C. The learned Judge rejected the petition to examine Mr.Edappadi K. Palaniswami on the grounds that he was the Chief Minister and no reason was stated to examine him as a defense witness. However, it is now admitted fact that Mr.Edappadi K. Palaniswami is not the present Chief Minister. The incident occurred at the Kodanadu Bungalow, owned by Dr.J.Jayalithaa, and the accused wanted to examine Mr.Edappadi K. Palanisami, who was the Chief Minister, as a defense witness to unearth information about the case. Under Section 233(3) of Cr.P.C., the Court must determine whether the petitioners have shown sufficient cause and relevancy to examine a defense witness. Section 233 of Cr.P.C. mandates that the accused be given an opportunity to present their defense and examine witnesses. The learned counsel argued that subsequent murders involved in the present case cast doubt over the prosecution's case. The court does not wish to assert whether the accused were involved in the crime or not; this will be determined during the course of the trial. However, it is the strenuous contention of the petitioners that the charges and their committal have been made to obscure the true facts behind the crime, and this contention cannot be overlooked without due consideration. Further it is the contention of the petitioners that the first respondent, the police, be attempting to protect certain individuals of priority. Admittedly, in the present case, several untoward incidents occurred after the crime took place. For instance, one of



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the accused died five days after the incident, another accused is said to have met with an accident, and a person who had worked at the bungalow subsequently committed suicide. The petitioners have requested to examine Mr.Edappadi K. Palanisami, which they believe is essential to uncovering the truth. The petitioner further contends that the incident occurred at the bungalow of the former Chief Minister, Selvi J. Jayalalithaa. During her visits to Kodanad, Edappadi K. Palanisami, who was serving as a Minister, is likely to have accompanied her. Therefore, he may be familiar with the bungalow. This Court finds the reasons stated by the learned counsel to be reliable. Considering these facts, and in the interest of justice in order to conduct a fair trial, this Court finds that the petitioners' request cannot be dismissed as vexatious. It is imperative that the true facts of the case be brought to light in the pursuit of justice. Denying the opportunity for both the prosecution and the defense to present their respective cases would likely constitute a violation of legal principles. This violation must be scrutinized carefully, as the right to a fair trial is fundamental to the justice system. The principle of a fair trial requires that both parties be given a reasonable opportunity to be heard. Any process that compromises this fundamental right undermines the integrity of the trial and impedes the pursuit of truth. Therefore, it is essential that all proceedings be conducted in a manner that ensures fairness and due process for all parties involved. It is settled preposition of law that failure to accord fair hearing either to the accused or the prosecution violates even



minimum standards of due process of law. At this juncture, it would be useful to refer the judgment of Hon'ble Apex Court in the case of **Zahira Habibulla H Sheik and another Vs. State of Gujarat** [Appeal (Crl.)No.446 to 449 of 2024], wherein, it was observed as follows:-

"A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial and not by an isolated scrutiny.

Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty stage-managed, tailored and partisan trial."

In this case, the petitioners have demonstrated valid reasons to examine Mr.Edappadi K. Palanisami as a defense witness. This examination will assist in properly evaluating the case and enable the court to appreciate both the prosecution's evidence and the defense's arguments. Allowing this request will contribute to a comprehensive understanding of the case and ensure a just outcome. Therefore, the application filed by the petitioners cannot be



said to be vexatious.

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20. The next witnesses sought to be examined were Mrs.V.K. Sasikala Natarajan, Mrs.Elavarasi, and Mr.N.V.Sudhakaran. The learned Judge held that these individuals had no title or interest over the Kodanad Estate property and, thus, dismissed the petition to examine them as defense witnesses. The learned Judge noted that no materials were presented to show their title or interest in the property. However, this case is not related to any civil dispute; it is about a criminal incident that occurred at the bungalow owned by Dr.J.Selvi Jayalalithaa, a highly esteemed bureaucrat and former Chief Minister of Tamil Nadu. When such an incident occurs, it is the court's duty to examine the case thoroughly and seek out any potential information that might help to uncover the truth. Each case must be examined with an open mind to achieve justice, considering all potential documents or witnesses that might support the case. In this case, the final report was filed under Sections 120(B), 147, 148, 149, 447, 449, 458, 324, 342, 395 read with 397 and 396, and 302 read with 120(B) of the IPC. One of the main charges is that the material object secured from the accused by the first respondent police is a rhinoceros miniature made of glass. While deposing about the relevant fact and its location, P.W.41, Thiru. S. Balasundaram, testified that during the cross-examination of accused 4, 6, 7, and 9, it was revealed that upon entering the bungalow, one would pass through the office room and proceed upstairs. On the right side was the Chief Minister's room, while on the



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left was Sasikala Natarajan's room. This testimony indicates that Sasikala was closely associated with the bungalow where the occurrence took place. Therefore, it cannot be stated that the examination of Mrs. Sasikala Natarajan as a defense witness is vexatious.

21. It is the contention of the petitioners that Mrs.Sasikala Natarajan is closely related to both Mrs.Elavarasi and Mr.N.V.Sudhakaran. Specifically, Mrs.Elavarasi is Sasikala's sister-in-law, and Mr.N.V.Sudhakaran is her nephew. Both Mrs.Elavarasi and N.V.Sudhakaran have been involved in several legal battles and controversies, including their conviction in the disproportionate assets case alongside Mrs.Sasikala and the Late Selvi J.Jayalithaa. While this Court will not delve into these contentions, it is essential to note that in criminal cases, especially those involving serious crimes like murder, circumstantial evidence can be crucial when direct evidence is not available. The Hon'ble Supreme Court of India has held that circumstantial evidence must form a complete chain indicating the guilt of the accused and exclude any other reasonable hypothesis. In this case, one watchman died, an accused died, and another accused was attacked but escaped, although his wife and daughter died, and another person who worked in the bungalow also died. Considering the suspicions surrounding this case, the examination of Mrs.Elavarasi and Mr.N.V.Sudhakaran cannot be deemed vexatious. Section 233 of Cr.P.C. mandates that the accused be given



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an opportunity to present their defense and examine witnesses. The petitioners have shown sufficient reason to examine Mrs.Sasikala Natarajan, Mrs.Elavarasi, and Mr.N.V.Sudhakaran as defense witnesses. This will aid in the proper appreciation of the case. Allowing the petition will help the court properly appreciate the prosecution evidence and substantiate the defense. Therefore, the application filed by the petitioners cannot be considered vexatious.

22. The next individuals sought to be examined on the defense side are Mr.Shankar I.A.S. and Mr.Murali Rambah, IPS Officer. The contention of the learned counsel for the petitioners is that on the date of the incident, all security arrangements were withdrawn for some reason, and the reason for the said withdrawal of security arrangements needs to be ascertained. Furthermore, as senior government officials, whenever Dr.J.Jayalithaa stayed there, they, being government officials, should have been present and might have been aware of certain facts about the bungalow. Therefore, examining Mr.Shankar, I.A.S., and Mr.Murali Rambah, I.P.S. Officer, is crucial to understand why the security arrangements were withdrawn on the date of the incident and to clarify certain facts about the bungalow. Their testimonies could provide vital information about the administrative decisions made and the reasons behind them. Further, when a murder occurs, the police inspector is required to report the incident to the Superintendent of



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Police (SP) immediately. The SP is the senior-most police officer in the district and is responsible for overseeing all police activities, including serious crimes like murder. The District Collector is typically not directly involved in the initial reporting of a crime, but they may be informed later as part of the administrative and bureaucratic process. Therefore, the application to examine these witnesses is not only reasonable but essential to ensuring a fair trial and to fully understanding the complexities of the case, particularly given the suspicions involved. Section 233 of Cr.P.C. mandates that the accused be given an opportunity to present their defense and examine witnesses. Hence, allowing the petition to examine Mr.Shankar I.A.S. and Mr.Murali Rambah, IPS Officer, will assist the Court in properly appreciating the prosecution evidence and substantiating the defense. Thus, the application filed by the petitioners cannot be considered as no reason was given by the petitioners.

23. The next witnesses sought to be examined by the petitioners on the defense side are Mr.Sajeevan and Mr.Sunil, State Organizers, Gudalur Post, The Nilgiris. The learned Sessions Judge rejected the request on the ground that no valid reason had been provided. According to the learned counsel, Mr.Sajeevan and Mr.Sunil, who hold the position of State Organizers and are residents of Gudalur, should be examined. Considering the submissions made by the learned counsel, and finding some merit in them, it



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is reasonable to state that, being residents of Gudalur, The Nilgiris District, and having been present whenever Dr.J.Jayalithaa visited the bungalow as party members, their examination is justified. Therefore, the rejection of the examination of witnesses, namely Mr.Sajeevan, State Organizer, AIADMK, Gudalur, and Mr.Sunil, State Organizer, Gudalur, on the grounds that no valid reason was provided, is incorrect.

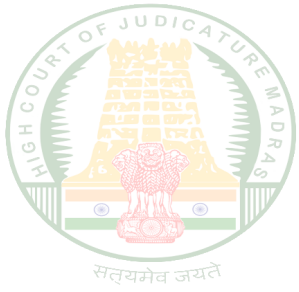
24. The contention of the learned Government Advocate (Criminal Side) that permitting the examination of witnesses would cause a delay in the trial is summarily rejected. A bare perusal of the counter-affidavit filed by the prosecution would clearly seen that the first accused, Sayan, sent a letter dated 29.07.2021 to the learned District and Sessions Judge, as well as to the Investigating Officer, the Inspector of Police, Kothagiri, in which he expressed his intention to disclose certain new facts relating to the case. In response to this representation, the Investigating Officer filed a memo on 13.08.2021, informing the learned Sessions Judge that the prosecution intended to conduct a further investigation under Section 173(3) of the Cr.P.C. Challenging this, one of the prosecution witnesses, Ravi, filed a petition in CrI.O.P.No.15030 of 2021, objecting to the further investigation and seeking directions for the completion of the trial. The petition was dismissed by this Court on 27.08.2021. Aggrieved over the same, the said Ravi filed an appeal before the Hon'ble Supreme Court of India. The Hon'ble Apex Court also



dismissed the appeal on 07.09.2021, as it was subsequently withdrawn by the petitioner. Since further investigation has been ordered, the examination of the witnesses, as referred to above, will not cause any delay in the trial. Further, the respondent-Government cannot contend that the number of witnesses to be called by the defense will delay the pursuit of the case. At this juncture, it would be useful to refer the judgment of the Apex Court in the case of **Arivazagan Vs. State Rep. by Inspector of Police [(2000) 3 SC 328]**, wherein, it was observed as follows:-

"10. In the present case it was the ground of delay which the Special Judge countenanced as the ground for pruning down the massive list of witnesses presented by the appellant. No doubt the time which would consume for completely examining all the 267 witnesses on the defence side would be unimaginably long if a court is compelled by law to exhaust such a whopping list in its full swing. The criminal trial would only limp badly and procrastination would be the inevitable consequence. Normally no court would mind if the list contains only a handful of names because the court would not then bother much about the delay factor. But when the list contains such a crowd of names of witnesses the court will certainly make a serious exercise to ascertain whether examination of all those witnesses is necessary in the interest of justice even at the risk of such procrastination."

As admittedly, in the present case, a further investigation was ordered, which was also challenged and confirmed by this Court, and the Hon'ble Apex Court upheld the decision for further investigation, the contention raised by the learned Government Advocate (Criminal Side) regarding the delay is hereby rejected.



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25. In view of the above, the learned Sessions Judge is directed to complete the trial in accordance with the law after giving opportunities to both the parties. If the prosecution is required to examine any additional witnesses based on the further investigation, the trial should proceed accordingly. After the prosecution's examination of witnesses is concluded, the petitioners must be given an opportunity to examine the eight witnesses mentioned in the petition, viz., (i)Thiru. Edappadi K. Palanisami, (ii) Mrs.V.K.Sasikala Natarajan, (iii)Mrs.Elavarasi, (iv)Mr.N.V.Sudhakaran, (v)Mr.Shankar I.A.S., (vi) Mr.Murali Rambah, IPS Officer, (vii)Mr.Sajeevan and (viii)Mr.Sunil, on the side of the defence.

26. In the result, the criminal revision is allowed, and the order passed by the learned Sessions Judge dated 30.04.2021 in CrI.M.P.No.292 of 2021 in S.C.No.2 of 2018 is set aside, except with respect to Mr.Natarjan, Manager, Kodanadu, who was permitted to be examined as a defense side witness. Consequently, the connected miscellaneous petition is closed.

06/12/2024

Index : Yes/No
Neutral Citation Case : Yes/No
Speaking Order : Yes/No



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To

- 1.The Inspector of Police,
Shollumattam Police Station,
The Nilgiris.
- 2.The Sessions Judge
Nilgiris.
4. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J

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Order in
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