

THE STATE REPRESENTED BY THE DEPUTY
SUPERINTENDENT OF POLICE

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v.

TR N SEENIVASAGAN
(Criminal Appeal Nos. 231-232 of 2021)

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MARCH 01, 2021

**[DR. DHANANJAYA Y CHANDRACHUD AND
M. R. SHAH, JJ.]**

Criminal Procedure Code, 1973 – s.311 – Ambit of – FIR under PC Act registered in 2010 against respondent-Chief Engineer in the Tamil Nadu Generation and Distribution Company Limited (TANGEDCO) and other co-accused (since deceased) – Sanction to prosecute accorded – Final report filed in July 2011 – Prosecution evidence closed in October 2017 – Applications filed u/s.311 in 2019 for recalling PW-1(Chairman of TANGEDCO) and PW-11 (Deputy Superintendent of Police) – Dismissed – On appeal, held: Having due regard to the nature and ambit of s.311, the applications filed by the prosecution ought to have been allowed – True test is whether it appears to the Court that the evidence of such person sought to be recalled is essential to the just decision of the case – Prosecution sought to produce a copy of the relevant document pertaining to the approval granted by the Board of TANGEDCO – To have it marked as an exhibit, PWs 1 and 11 were sought to be recalled – Document was crucial for the decision of the case since the respondent had taken a defense that this document had been signed by the Chairman of TANGEDCO without the Board's approval – Delay in filing the applications explained by prosecution – Impugned judgment set aside – Prevention of Corruption Act, 1988 – ss.7, 12, 13(2) r/w 13(1)(d).

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Allowing the appeals, the Court

HELD: 1.1 Having due regard to the nature and ambit of Section 311 of the CrPC, it was appropriate and proper that the applications filed by the prosecution ought to have been allowed. Section 311 provides that any Court may, at any stage of any inquiry, trial or other proceedings under the CrPC, summon any

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- A person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined and the Court shall summon and examine or recall and re-examine any such person “if his evidence appears to it to be essential to the just decision of the case”. The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case. In the present case, the prosecution has sought to produce a copy of the relevant document pertaining to the approval granted by the Board of TANGEDCO on the record and to have it marked as an exhibit in the evidence, for which purpose PWs 1 and 11 were sought to be recalled. In its applications, the prosecution noted that these witnesses were required to mark the relevant document, which was crucial for the decision of the case since the respondent had taken a defense that this document had been signed by the Chairman of TANGEDCO without the Board’s approval. In explaining the delay in filing the applications, the prosecution noted that it was due to the transfer of Special Public Prosecutor who was conducting the case. The rejection of the applications for recall under Section 311 was not in order. The impugned judgment and order of the High Court is set aside. The applications filed by the prosecution for recall of PWs 1 and 11 shall accordingly stand allowed. [Paras 13, 15 and 16][534-B-D; 536-D-E; 537-E-F]

Manju Devi v State of Rajasthan (2019) 6 SCC 203 :
[2019] 6 SCR 68 – relied on.

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Case Law Reference

[2019] 6 SCR 68 relied on para 14

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal
Nos. 231-232 of 2021

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From the Judgment and Order dated 24.06.2019 of the High Court of Judicature at Madras in Crl.O.P. Nos. 7694 of 2019 and 7816 of 2019.

M. Yogesh Kanna, Raja Rajeshwaran S., Aditya Chadha,
Ms. Uma Prasuna Bachu, Advs. for the Appellant.

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Senthil Jagadeesan, Ms. Mrinal Kanwar, Advs. for the Respondent. A

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. These appeals arise out of a judgment and order of a learned B
Single Judge of the High Court of Judicature at Madras dated 24 June
2019.

3. The appellant is the State represented by the Deputy
Superintendent of Police, Vigilance and Anti-Corruption, Chennai City–
IV. On 13 July 2010, FIR No 14 of 2010 was registered against the C
respondent (Accused No 1) and another accused (who has since passed
away) under the Prevention of Corruption Act, 1988¹. The respondent
was a Chief Engineer in the Tamil Nadu Generation and Distribution
Company Limited². It is alleged that he demanded a bribe for revoking
the suspension of an employee. On 28 June 2011, the Chairman cum D
Managing Director of TANGEDCO accorded sanction to prosecute the
respondent and the co-accused under the PC Act. On behalf of the
appellant, it has been urged that this sanction was accorded by the
Chairman on behalf of the Board of TANGEDCO.

4. On the completion of the investigation, the investigating officer E
filed a final report under Section 173(2) of the Code of Criminal Procedure
1973³ on 27 July 2011 against the respondent and the co-accused under
Sections 7, 12 and 13(2) read with Section 13(1)(d) of the PC Act.
During the trial in CC No. 9 of 2011, the prosecution examined witnesses
PW-1 to PW-12, and through them marked Exhibits P-1 to P-11 and
MO-1 to MO-10. F

5. Insofar as it is material for this matter, it is necessary to note
that PW-1, the Chairman of TANGEDCO, was examined in-Chief on 6
June 2013. PW-1 was cross-examined by the respondent on 18 March
2014, and was re-called on 17 July 2014 at the behest of the co-accused
for further cross-examination. The examination in-Chief of PW-11, the G
Deputy Superintendent of Police, was recorded on 1 February 2017.
Thereafter, he was cross-examined on 13 February 2017, and subsequently

¹ “PC Act”

² “TANGEDCO”

³ “CrPC”

A re-called and cross-examined again on 27 February 2017. The evidence from the prosecution's side was closed on 31 October 2017, and the case was posted for final arguments.

6. The arguments on behalf of the prosecution commenced on 7 December 2017. The arguments of the defense commenced on 16 December 2017, and concluded on 16 February 2018. The case was posted for the final submissions of the prosecution on 27 February 2018, and appears to have been adjourned on thirty-three occasions until 26 October 2018. In the meantime, the presiding officer was transferred on 25 June 2018, as a result of which the arguments could not be finally concluded. Even after 26 October 2018, the case was adjourned on thirty-five occasions, following which it was posted on 11 March 2019 for the prosecution to submit its written arguments.

7. However, on 11 February 2019, the prosecution filed Criminal MP Nos 224 and 225 of 2019 under Section 311 of CrPC for recalling PWs 1 and 11, to enable the appellant to mark as an exhibit in evidence, the approval dated 26 June 2011 of the Board of TANGEDCO for sanctioning the prosecution of the respondent and the co-accused. The respondent opposed these applications. The Trial Judge passed an order dated 19 February 2019 by which the applications under Section 311 were dismissed.

8. The prosecution thereafter filed Criminal OP Nos 7694 and 7816 of 2019 under Section 482 of CrPC before the High Court challenging this order. These have been dismissed by the High Court by the impugned order dated 24 June 2019. After noting the earlier evidence of PWs 1 and 11, the High Court held that the applications had been filed by the prosecution belatedly. The appellant has, thus, travelled to this Court.

9. On 9 July 2020, this Court passed the following order, *inter alia*, condoning the delay and recording the submissions urged on behalf of the appellant:

G "1 Delay condoned.

 2 Mr M Yogesh Kanna, appearing on behalf of the petitioner submits that Annexure P-4 to the Special Leave Petition, which is the order of sanction dated 28 June 2011, has been marked as Exhibit P-1 in the trial. Referring to the contents of the order of sanction, learned counsel submits that there

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is a reference in the order to the fact that the appointing authority is the Board and that the papers for grant of sanction had been placed before the Board. Learned counsel submitted that the prosecution only seeks to mark as an exhibit the proceedings which took place before the Board. A

3 Issue notice, returnable in six weeks. B

4 Dasti, in addition, is permitted.

5 In the meantime, for a period of eight weeks from today, there shall be a stay of the further proceedings in the pending trial, namely, CC No 9 of 2011, pending before the Special Judge, Special Court for the Cases under Prevention of Corruption Act at Chennai.” C

10. In pursuance of the order issuing notice, Mr Senthil Jagadeesan, learned counsel, has entered appearance on behalf of the respondent and has filed a counter-affidavit.

11. Mr M Yogesh Kanna, learned counsel appearing on behalf of the appellant, submits that the order of sanction dated 28 June 2011 has already been marked as Exhibit P-1 during the course of the trial. Essentially, the submission of the prosecution is that the purpose of recalling PWs 1 and 11 was to place on the record and mark in evidence a copy of the reference which was made to the Board of TANGEDCO, where the respondent was employed as a Chief Engineer. Learned counsel submits that having due regard to the ambit of Section 311, the applications ought to have been allowed, particularly in view of the fact that the final arguments could not be concluded in view of the intervening transfer of the judicial officer and the case is still pending. It was further submitted that having regard to the nature and scope of the proceedings which arise out of the provisions of the PC Act, it would be appropriate and in the interests of justice if liberty is granted to the prosecution to place the relevant document pertaining to the approval granted by the Board of TANGEDCO on the record. D
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12. On the other hand, Mr Senthil Jagadeesan has drawn the attention of the Court to the depositions of PW-1 and PW-11. Adverting also to the purported Board Minutes at Annexure P-2 (a photocopy of which has been filed at Annexure R-2 of the counter-affidavit), it has been submitted that the document, as a matter of fact, does not have the signatures of the members of the Board. Moreover, it has been urged G
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A that PW-1, who is the Chairman of TANGEDCO, during the course of his deposition, submitted that he had granted sanction for the prosecution of the respondent and the co-accused without reference to the Board, and that he was entitled to do so in accordance with the provisions of the PC Act.

B 13. In our view, having due regard to the nature and ambit of Section 311 of the CrPC, it was appropriate and proper that the applications filed by the prosecution ought to have been allowed. Section 311 provides that any Court may, at any stage of any inquiry, trial or other proceedings under the CrPC, summon any person as a witness, or
C examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined and the Court shall summon and examine or recall and re-examine any such person “if his evidence appears to it to be essential to the just decision of the case”. The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision
D of the case.

14. In **Manju Devi v State of Rajasthan**⁴, a two-Judge bench of this Court noted that an application under Section 311 could not be rejected on the sole ground that the case had been pending for an inordinate amount of time (ten years there). Rather, it noted that “the length/duration
E of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. In other words, the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness”. Speaking for the Court, Justice Dinesh Maheshwari expounded on the principles underlying Section 311 in the following terms:
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“10. It needs hardly any emphasis that the discretionary powers like those under Section 311 CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned as also to ensure that no prejudice is
G caused to anyone. The principles underlying Section 311 CrPC and amplitude of the powers of the court thereunder have been explained by this Court in several decisions [Vide Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595; Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4

H ⁴(2019) 6 SCC 203

SCC 158 : 2004 SCC (Cri) 999; Mina Lalita Baruwa v. State of Orissa, (2013) 16 SCC 173 : (2014) 6 SCC (Cri) 218; Rajaram Prasad Yadav v. State of Bihar, (2013) 14 SCC 461 : (2014) 4 SCC (Cri) 256 and Natasha Singh v. CBI, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828] . In Natasha Singh v. CBI [Natasha Singh v. CBI, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828] , though the application for examination of witnesses was filed by the accused but, on the principles relating to the exercise of powers under Section 311, this Court observed, inter alia, as under: (SCC pp. 746 & 748-49, paras 8 & 15)

“8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at “any stage” of “any enquiry”, or “trial”, or “any other proceedings” under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined *if his evidence appears to it, to be essential to the arrival of a just decision of the case*. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to *cause serious prejudice* to the defence of the accused, or to give an *unfair advantage to the opposite party*. Further, the additional evidence must not be

- A received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court
- B only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as “any court”, “at any stage”, or “or any enquiry, trial or other proceedings”, “any person” and “any such person” clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.” (emphasis in original)”
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15. In the present case, the prosecution has sought to produce a copy of the relevant document pertaining to the approval granted by the Board of TANGEDCO on the record and to have it marked as an exhibit in the evidence, for which purpose PWs 1 and 11 were sought to be recalled. In its applications, the prosecution noted that these witnesses were required to mark the relevant document, which was crucial for the decision of the case since the respondent had taken a defense that this document had been signed by the Chairman of TANGEDCO without the Board’s approval. In explaining the delay in filing the applications,
- E the prosecution noted that it was due to the transfer of Special Public Prosecutor who was conducting the case. The relevant parts of the prosecution’s application are reproduced below:
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- “It is submitted that the case was conducted by Additional Legal Adviser Tr.T.Panneerselvam and he was transferred as Deputy Director of Prosecution, Kancheepuram District and hence Tr.Pandiarajan, ADLA, HQ, DVAC, Chennai is posted as Special Public Prosecutor for conduction this case.
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- H It is submitted that the Exhibit.P1, the order of sanction itself shows that the order was issued by the Board. But the defence has

taken a stand that the order was not issued by the Board and the same was issued by the Chairman who was not competent person to accord the sanction. A

It is submitted that at the time of filing the charge sheet the Investigation Officer has obtained the Approval Order of the Board and not submitted it before this Hon'ble Court. B

It is submitted that in support of the contention of the prosecution it is necessary to mark the documents pertaining to the Board of TANGEDCO to satisfy this Hon'ble Court for just decision of the case that the sanction was accorded in accordance with law and rules and regulations stated in the TANGEDCO. C

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It is submitted that recalling PW1 and PW11 for marking the documents pertaining to the Sanction cannot be termed as lacuna or to fill up the gap. But only to help this Hon'ble Court for arriving just decision of the case." D

16. Undoubtedly, we note that the respondent must have an opportunity to cross-examine these witnesses. Hence, we are not expressing any view on the merits of the submissions which were urged on behalf of the respondent by Mr Senthil Jagadeesan, in regard to the depositions of PWs 1 and 11, since these will have to be evaluated by the learned trial Judge. However, we are of the view that the rejection of the applications for recall under Section 311 was not in order. We accordingly allow the appeals and set aside the impugned judgment and order of the High Court dated 24 June 2019. The applications filed by the prosecution for recall of PWs 1 and 11 shall accordingly stand allowed. The respondent would also be at liberty to cross-examine these witnesses. E F

17. Having regard to the pendency of the trial for a long period of time, we order and direct that the trial be completed by 31 July 2021.

18. Pending application, if any, stands disposed of.