IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2015

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THE HONOURABLE MS. JUSTICE R. MALA

CRL.R.C.No.903 of 2014

State by Inspector of Police
CBI/ACB, Chennai. ..Petitioner/Complainant

Vs

1.K.Thenmozhi
2.R.Ambeth
3.V.Rajendran
4.R.Sekar
5.D.Ramesh .. Respondents/A1 to A5

Prayer: Criminal Revision filed under Section 397 read with 401 of Cr.P.C. to call for records in C.C.No.48 of 2012 pending trial on the file of the learned XIV Additional Special Judge for CBI cases, Chennai and to set aside the order dated 21.05.2014 rejecting permission to the petitioner to mark the charge sheet listed document LD-2 which is the surprise check proceedings drawn up by the Inspector of Police on 11.05.2012.

For Petitioner : Mr.K.Srinivasan
Special Public Prosecutor (CBI cases)

For R1 and R3 :Mr.P.Saravanan

For R4 : Mr.V.Ramesh

R2 : No appearance
R5 : Mr.K.Ramesh Kumar

ORDER

This Criminal Revision Petition is filed to call for records in C.C.No.48 of 2012 pending trial on the file of the learned XIV Additional Special Judge for CBI cases, Chennai and to set aside the order dated 21.05.2014.

2.Learned Special Public Prosecutor (CBI cases) submitted that while P.W.3 was in witness box, CBI intended to mark the proceedings made on surprise check which was held on 11.05.2012 and at that time, the respondents/accused have raised objections. The trial Court after hearing both sides, has not permitted the CBI/petitioner herein to mark the document, against which, the present revision is preferred. It is further submitted that the surprise check was held on 11.05.2012 and the CBI seized material objects and cash from A1/first respondent herein and hence, surprise check proceedings is necessary. But the trial Court has failed to consider the same. Hence, he prayed for allowing this revision. He relied upon the decision of the Apex Court in 2002 (10) SCC 529 (Bipin Shantilal Panchal v. State of Gujarat and another) and submits that document can be marked subject to objection and at the time of delivering judgment, admissibility can be decided.

3.Resisting the same, learned counsel for the respondents/accused submitted that the document pertains to surprise inspection is an inadmissible evidence as per Section 25 of the Indian Evidence Act. As per Section 27 of the Evidence Act, only an information leading to discovery portion alone is admissible in evidence. But there is no discovery in the case on hand. It is further submitted that there is no seizure mahazar and the trial Court has rightly rejected the permission to mark the document. Hence, he prayed for dismissal of the revision. To substantiate his arguments, he relied upon the following decisions:

(i)AIR 1966 SC 119 (Aghnoo Nagesia v. State of Bihar);

(ii) 2007 (12) SCC 230 (Aloke Nath Dutta and others v. State of West Bengal);

(iii) (2010) 8 SCC 423 (Shalimar Chemicals Works Ltd. v. Surendra Oil and Dal Mills (Refineries) and others);

4.Considered the rival submissions made on both sides and perused the typed set of papers.

5.The case of the prosecution is that A1 while working as Examiner entered into criminal conspiracy with A2 to A5 in order to commit criminal misconduct and to indulge in corrupt practices for accepting illegal gratification as a reward in the matter of registration of goods, inspection/examination of goods and clearing imported consignments from the employees of Customs House Agents. On 11.05.2012, on source information, while CBI conducting surprise check, collected some materials. Hence, the CBI sought for permission to mark the said document through P.W.3. But the trial Court considering the objections raised by the respondents rejected the permission to mark the document.

6.During the course of arguments before the trial Court, the learned Special Public Prosecutor (CBI cases) has relied upon the judgment in 2002 (10) SCC 529 (Bipin Shantilal Panchal v. State of

Gujarat and another) and the same has been rightly distinguished by the trial Court. But the above decision is not applicable to the facts of the present case. Even though it was stated that proceedings drawn by the Inspector of Police during surprise check on 11.05.2012, entire document is not at all admissible in evidence.

7.At this juncture, it is appropriate to consider the following decisions relied upon by the learned counsel for the respondents/accused:

(i)In AIR 1966 SC 119 (Aghnoo Nagesia v. State of Bihar), wherein it was held that the document is hit by Section 25 of the Evidence Act. In para-19, it is held as follows:

> "19.If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by S.25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of S.25 is lifted by S.27."

But the above decision is not applicable to the facts of the present case. Because, it is not a confession recorded from the accused and it is the proceedings recorded by the investigating agency at the time of surprise inspection.

(ii) In 2007 (12) SCC 230 (Aloke Nath Dutta and others v. State of West Bengal), in the case of murder, recovery under Section 27 of Evidence Act was mentioned. So the above decision is not applicable to the facts of the present case.

(iii)In (2010) 8 SCC 423 (Shalimar Chemicals Works Ltd. v. Surendra Oil and Dal Mills (Refineries) and others), wherein it was held that as per Order 41 Rule 27 in respect of additional evidence, there is a provision under C.P.C. So this decision is not applicable to the facts of the present case.

8.Considering the facts and circumstances of the case, the proceedings pertains to 11.05.2012 surprise check is the proceedings recorded by the investigating agency during surprise check on 11.05.2012 and it is the case of the CBI to fortify the surprise check they had seized some materials as well as cash from A1. But there is no seizure mahazar regarding the same.

9.At this juncture, learned Special Public Prosecutor (CBI cases) submits that there was a surprise check on 11.05.2012 and to prove the same, that document is necessary. But the above argument does not hold good. Once the document is not an admissible evidence, the Court cannot give opportunity to the CBI to mark that document.

10.Under the aforesaid circumstances, in my opinion, the trial Court has considered all the aspects in proper perspective and rightly rejected the permission to mark the document. Therefore, I do not find any merits in this revision and accordingly, this revision deserves to be dismissed and it is hereby dismissed.

11.In the result, the Criminal Revision Petition is dismissed by confirming the order dated 21.05.2014 in C.C.No.48 of 2012 on the file of the learned XIV Additional Special Judge for CBI cases, Chennai. The trial Court is directed to dispose of the case in C.C.No.48 of 2012 within three months from the date of receipt of a copy of this order on day to day basis. The CBI is directed to produce the witnesses whenever the Court directs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Inspector of Police
CBI/ACB, Chennai.

2.XIV Additional Special Judge for CBI cases, Chennai.

3.The Special Public Prosecutor (CBI Cases)
High Court, Chennai.

4.The Record Keeper
Criminal Section, High Court, Chennai.

+1 cc to Mr.K.RameshKumar Advocate sr.14736
+1 cc to Mr.K.Srinivasan Advocate sr.14494
+1 cc to Mr.P.Saravanan Advocate sr.14874

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