

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2015

CORAM:

THE HON'BLE MR.JUSTICE P.DEVADASS

Crl.R.C. No.218 of 2005 & M.P.1 of 2015

S.R.Baskar

.. Petitioner

Vs.

State of Tamil Nadu
Rep. by its
The Deputy Superintendent of Police,
Directorate of Vigilance & Anti Corruption,
Chennai - 6 .. Respondent

Petition filed under Section 401 r/w. 397 of the Code of Criminal Procedure, to set aside the order dated 13.01.2015 and call for the entire records comprised in Spl.C.C.No.1 of 2009 made by the learned X Additional Judge, Special Court under prevention of corruption act at Chennai.

For Petitioner : Mr.Vimal B.Crimson

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

O R D E R

Petitioner/A2 seeks revising of the order of the trial court passed in Crl.M.P.No.595 of 2014 in Spl. C.C.No.1 of 2009 permitting the prosecution to cite S.Thirunavukarasu, D.S.P., Vigilance & Anti Corruption as witness No.90.

2. Petitioner and certain others are being prosecuted by the Vigilance & Anti Corruption Detachment, Chennai before the Special Court under P.C. Act, Chennai, for certain specific offences. Cognizance has been taken on the final report filed under section 173 Cr.P.C. Charges were framed. Plea has been recorded. Now, prosecution witnesses are being produced.

3. At this stage, prosecution filed Crl.M.P.No.595 of 2014 to cite S.Thirunavukkarasu, D.S.P. as witness No.90. In the impugned order, dated 13.01.2015, prosecution has been permitted to cite him

as a witness. He has also been examined as PW.64, however, he is yet to be cross examined by the defence side.

4. It is the contention of the learned counsel for the petitioner that only at a later stage of the case, without following the provisions of section 173(2) Cr.P.C, the said witness has been cited as an additional witness, in such circumstances, defence has been prejudiced and the rights of the accused has been affected. Thus, the impugned order suffers from illegality, thus it requires revision.

5. On the other hand, the learned Additional Public Prosecutor would submit that S.Thirunavukkarasu, D.S.P., comes to the picture after the retirement of M.B.Natarajan, who has completed the investigation and filed the Final Report in the Trial Court, complied with the return endorsement of the trial court by curifying the defect and has resubmitted the Final Report. In the circumstances, to complete the prosecution case, the said Thirunavukkarasu, D.S.P., who has been omitted to be included in the Final Report has been included as a prosecution witness and permission has been sought for, it has been granted and in no way by adding of S.Thirunavukkarasu, D.S.P., as a prosecution the defence will be prejudiced.

6. I have considered the rival submission, perused the impugned order.

7. In this case, the entire investigation has been conducted by M.B.Natarajan, D.S.P., he has filed the Final Report and bid farewell to the case and the department and thereafter, the mantel of conducting the prosecution has fallen on his successor S.Thirunavukkarasu, D.S.P. As he was in charge of the case diary he is bound to answer the return endorsement of the trial court and its resubmission to the Court. The prosecution wants to bring this aspect also by citing Thirunavukkarasu, D.S.P. as an additional witness.

8. It is not that, once a Final Report is filed prosecution has no chance, no opportunity to add additional witness, who were left out in the list of witnesses by oversight.

9. Finally, in this case, witness no.90 S.Thirunavukkarasu, D.S.P. did not do any further investigation, did not collect any evidence. He has performed his duty as an officer, who was in charge of the case-diary of this case. M.B.Natarajan cannot do so, because he ceases to be a police man and he has become an ordinary man.

10. In the circumstances, this court is of the view that the impugned order of the trial court, dated 13.01.2015 permitting the citing of the said Thirunavukarasu, D.S.P does not suffer from any illegality.

11. Thus, this Revision Case fails and it is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

mrp

To

- 1 X Additional Special Judge,
Special Court under Prevention of
Corruption Act at Chennai.
2. The Deputy Superintendent of Police,
Directorate of Vigilance & Anti Corruption,
Chennai - 6.
3. The Public Prosecuto, High Court, Madras.
- + 1 cc Public Prosecutor, Pleader Sr.378/15

Copy to: The Section Officer,
Criminal Section, High Court, Madras

AK(CO)
EU 07.05.2015

Cr1.R.C. No.218 of 2015

WEB COPY