

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.7.2015

CORAM:

THE HON'BLE MR.JUSTICE P.DEVADASS

Crl.R.C. No.243 of 2015

M. Subramaniyan

.. Petitioner/Accused 8

Vs.

State Rep. by Inspector of Police,
CBI;ACB,
Chennai.
(Through Special Public Prosecutor)
(Spl.C.C.No.6/2010)

.. Respondent/Complainant

Petition filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the order of the learned special judge in Crl.M.P.No.147 of 2015 in Spl.C.C.No.6 of 2010 on the file of the Special Judge at Puducherry, dated 07.03.2015 and consequently, direct the respondent to furnish the Tamil version of the translated charge sheet and other documents from English or any other orders.

For Petitioner : M/s.P.Parthiban & M.Gnanasekar
For Respondent : Mr.K.Srinivasan
Special Public Prosecutor, C.B.I

O R D E R

Dissatisfied with the dismissal of his petition under Section 272 Cr.P.C in Crl.M.P.No.147 of 2015 in Spl.C.C.No.6 of 2010, whereunder the learned Special Judge for CBI cases, Puducherry declined to grant him translated version of the Final Report filed under Section 173 Cr.P.C, this revision has been filed by the petitioner/A8.

2. The petitioner and certain others are being prosecuted in Spl.C.C.No.6 of 2010 before the said Court for their alleged commission of certain white collar offences and also certain offences under the provisions of Prevention of Corruption Act.

3. Petitioner (A8) filed petition (Crl.M.P.No.147/2015) under Section 272 Cr.P.C seeking Tamil version of the Final Report in English filed by the CBI under Section 173(2) Cr.P.C since he is not conversant with English.

4. The trial Court taking note of the fact that already the petitioner has filed discharge petition in English and also certain other petitions in English dismissed his petition.

5. According to Mr.P.Parthiban, learned counsel for the petitioner, the petitioner is an illiterate, working in a shop where helmets were stated to have been sold. By quirk of events, he has been roped in in this case. He is defending his case. He is entitled to put up an effective defence. Unfortunately, he has been slapped with Final Report by the CBI which is in English running to 9 pages. As he is not conversant with English, he did not know what it contains and what allegations are made against him.

6. The learned counsel for the petitioner would further submit that the principles of natural justice demands supply of materials, accusations in the language in which the accused is conversant. Only on, he being made to understand what the accusations are as against him, he could be able to defend himself. It is not mere defence. It is effective defence. He is constitutionally entitled to put on effective defence. (see Article 22(1), Constitution of India). Ineffective defence deprives the reasonable opportunity to the accused and it will cause him much prejudice.

7. The learned counsel for the petitioner also contended that the matter is to be looked from the angle of principles of natural justice. No pedantic approach, no literal interpretation serve any useful purpose.

8. The learned counsel for the petitioner also cited Ayyasamy and another Vs. DSP/CBI/SCB/Chennai (Crl.R.C.Nos.1412 and 1413 of 2006 dated 17.04.2007) wherein my esteemed brother Hon'ble Justice K.N.BASHA, now, Chairman, Intellectual Property Board, Southern Region, Chennai under similar circumstances directed furnishing of translated version of certain document with the assistance of District Legal Services Authority.

9. The learned Special Public Prosecutor, CBI would not quarrel with the proposition that principles of natural justice demands adequate opportunity being given to the accused by supplying him the necessary materials, but it all depends on the facts and circumstances of each case. Now, in this case, the petitioner is being assisted by a learned counsel, who is well versed in English. Further, after having lost his battle in the discharge petition, now, the petitioner wishes to derail the trial.

10. The learned Special Public Prosecutor would submit that C.AYYASAMY (supra) is distinguishable on facts. In C.AYYASAMY (supra), a statement under Section 161 Cr.P.C was recorded in Malayalam. The accused knows only Tamil. In such circumstances, this Court directed the translation of the said statement into Tamil and it was furnished to the accused. Thus, C.AYYASAMY (supra) does not apply to the facts of this case.

11. I have anxiously considered the rival submissions, perused the impugned order, and the materials on record and the decision cited.

12. This case is helmet case. Petitioner is being prosecuted as A8. He is stated to have studied up to III Form.

13. There cannot be second thought over the proposition that fair trial, fair justice, fair opportunity requires furnishing of copies of all incriminating materials proposed to be projected against the accused and only when he is made to understand those materials, he could be able to defend himself effectively. Section 207 Cr.P.C is an example of extending principles of natural justice to criminal law.

14. Natural justice is not a lurking land mine. It is not a phantom nor a bubble. Natural justice is minimum justice. It is 'Hear before condemn' and 'Rule against bias'. Natural justice is an unwritten law. It came into being, the moment the human beings were brought into existence. Even Christ before banishing Adam and Eve, who are our forefathers, gave them opportunity. 'Did they eat the forbidden fruit', thereafter only, they were banished to this world. This is a classic biblical example of application of principles of natural justice. But, by an express provision in a statute or rule or regulation, the requirements to observe of principles of natural justice can dispensed with. Application of principles of natural justice also depends on the facts and circumstances of each case.

15. In a criminal case, the Court has to see whether any prejudice is caused to the accused by denying him any opportunity such as non supply of copies of document, inclusive of non supply of translated version of copies of document.

16. Now, in this case, already the petitioner has filed discharge petition in English. This was also noted by the trial Court in its impugned order. The petitioner is being represented by a lawyer, a legal practitioner. It is not stated or cannot be stated that his learned counsel does not know English. The petitioner is being represented by a lawyer, who knows English, who is giving him legal advise as to the defence to be put up in the case, as to the defence documents, his advise on the prosecution records. It is too elementary that now this time, the learned counsel for the petitioner has read the Final Report in English and advised his

client/petitioner on its implications.

17. In C.AYYASAMY's case (supra), no arguments as to the fact that the accused was defended by a lawyer, who knows English was then, that may not be an issue in C.AYYASAMY (supra). In C.AYYASAMY (supra), admittedly, a statement recorded under Section 161 Cr.P.C was in Malayalam. Petitioner does not know Malayalam. He knows only Tamil. In such circumstances, in C.AYYASAMY (supra), the learned Judge passed order directing translation of the said statement from Malayalam to Tamil with the assistance of Tamil Nadu State Legal Services Authority at their cost.

18. The facts of the present case and the facts of C.AYYASAMY (supra) are not in pari materia, in other words, not analogous. Inasmuch as this Court is convinced that in the presence of an English knowing Advocate, no prejudice would be caused to A8/petitioner in understanding the Final Report running to 9 pages in English. In the

P.DEVADASS, J

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circumstances, I see no illegality or perversity in the impugned order passed by the learned trial Judge. Thus, I have no occasion here to interfere with the said order.

19. In the result, this criminal revision fails and it is dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Special Judge for CBI Cases, Puducherry.

2. The Special Public Prosecutor, CBI Cases, Chennai.

3. Inspector of Police,
CBI;ACB, Chennai.

1 cc to Mr.M.Gnanasekar , Advocate Sr.No.36866

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pmk.11.8.2015