

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.OP No.12667 of 2014

J.Swaminathan

.. Petitioner/2nd
Accused

Vs

State rep.by:
Inspector of Police,
CBI, EOW, Chennai

.. Respondent/
Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records submitted in Order dated 3.4.2014 in Crl.M.P.No.1618 of 2014 in C.C.No.458 of 2013, pending on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai and set aside the same and consequently direct the respondent to produce the following documents: 1) Copies of all Letters of Credit established by Vijaya Bank, Mount Road Branch, on behalf of Madras Polymoulds Exports Pvt.Ltd (MPEP) from 2008 along with L/C opening application forms submitted by Madras Polymoulds Exports Ltd., 2) Correspondence file -I of Said Enterprises from 5.6.2001 to 8.2.2003 and 3) L.C. file for the period between 22.5.2007 to 23.6.2007.

For Petitioner : Mr.P.V.Balasubramaniam
For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor

ORDER

This Criminal Original Petition has been filed praying to set aside the order dated 3.4.2014 passed in Crl.M.P.No.1618 of 2014 in C.C.No.458 of 2013 by the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. The petitioner herein has filed the petition in question under section 91 of Code of Criminal Procedure, 1973 praying to send for the documents mentioned therein, wherein the present respondent has been shown as sole respondent.

3. It is averred in the petition that the petitioner has been shown as second accused in Calendar Case No.458 of 2013. During the course of investigation, the documents in question have been seized from the petitioner by the respondent, but the respondent has not chosen to file all those documents into Court. Under the said

circumstances, present petition has been filed for getting the relief sought for therein.

4. The Court below, after considering the divergent contentions made on either side, has dismissed the petition. Against the dismissal order, the present Criminal Original Petition has been preferred.

5. The learned counsel appearing for the petitioner has contended that the documents mentioned in the petition have been seized from the petitioner by the respondent and since the respondent has failed to submit all those documents into Court, the present petition has been filed, but the court below without considering the nature of contentions put forth on the side of the petitioner, has erroneously dismissed the petition and therefore the dismissal order passed by the Court below is liable to be set aside and the petition in question is liable to be allowed.

6. The learned Special Public Prosecutor appearing for the respondent has contended that in C.C.No.458 of 2013, charges have not been framed and further for similar relief, the petitioner has filed a petition under section 207 of Code of Criminal Procedure, 1973 and the said petition has been dismissed and now for the second time, by way of changing section for the same relief, the present petition has been filed and the Court below after considering the contentions put forth on either side, has rightly dismissed the petition and therefore, the dismissal order passed by the Court below need not be set aside.

7. It is seen from the order passed by the Court below that for identical relief, the petitioner has filed a petition under section 207 of Code of Criminal Procedure, 1973 and the same has been dismissed. After dismissal of the said petition, the present petition has been filed under section 91 of Code of Criminal Procedure, 1973.

8. The Court below has relied upon the decision reported in 2005 SCC 568 (State of Orissa vs. Debendra Nath Padhi), wherein the Hon'ble Supreme Court has held that before framing of charges, the accused is not entitled to maintain a petition under section 91 of Code of Criminal Procedure, 1973.

9. Considering the fact that for identical relief, a petition has been filed under section 207 of Code of Criminal Procedure, 1973 and the same has been dismissed and also considering the definite stand taken by the Hon'ble Supreme Court as stated supra, this Court is of the view that the present petition is not legally maintainable.

10. The Court below, after considering all the contentions raised on either side, has rightly dismissed the petition. In view of the discussions made earlier, this Court has not found any error

nor illegality in the order passed by the Court below.

In fine, this Criminal Original Petition is dismissed. The order dated 3.4.2014 passed by the Court below in Crl.M.P.No.1618 of 2014 in C.C.No.458 of 2013 is confirmed.

-Sd/-

Assistant Registrar(cs-II)

//True copy//

Sub Assistant Registrar

ajr

To

1. Additional Chief Metropolitan Magistrate,
Egmore,
Chennai
2. Inspector of Police,
CBI, EOW, Chennai
3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mrs.B.F.?S Legal(Mr.P.V.Subramanian,Advocate) sr.45229)

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cp 25/09/2015

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