

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.07.2015

CORAM

THE HONOURABLE MR. JUSTICE P.DEVADASS

Crl.O.P.No. 18032 of 2015

1. K.Baskar
2. G.Anitha

..Petitioners

Versus

State Represented by
Inspector of Police,
CBI/SPE/ACB, Chennai.
R.C.No.48(A)/2010

... Respondent

Prayer:

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to set aside the order passed by the learned IX Additional Special Judge for CBI Cases, Chennai in Crl.M.P.No.3552 of 2015, dated: 19.06.2015 and direct the learned IX Additional Special Judge for CBI Cases, Chennai to call for the documents sought for by the petitioners in their petition filed under Section 91 Cr.P.C in Crl.M.P.No.3552 of 2015, namely, the tender of pardon proceedings under Section 306 Cr.P.C issued by the learned XI Metropolitan Magistrate in Crl.M.P. No.2537 of 2011 dated 02.05.2011 in C.C.No.1/2013 from the file of the XIII Additional Special Judge for CBI Cases, Chennai for effective cross examination of PW29 Mr.Hanifa.

For Petitioners : M/s.Lakshmipriya Associates

For respondent : Mr. K.Srinivasan,
Special Public Prosecutor
for CBI Cases

O R D E R

Petitioners/A1, A2 aggrieved by the dismissal of their send for petition filed under Section 91 Cr.P.C in Crl.M.P.No.3552/2015 in C.C.No.30/2011 on the file of the IX Additional Special Judge for CBI Cases, Chennai, have filed this Crl.O.P under Section 482 Cr.P.C.

2. Petitioners are being prosecuted for certain offences before the trial court. An accused in a criminal case pending before the

learned XIII Additional Judge, CBI cases, Chennai has been tendered pardon under Section 306 Cr.P.C by the learned XI Metropolitan Magistrate, Chennai. He has been examined as PW29 in C.C.No.30/2011 before the learned IX Additional Special Judge, CBI Cases, Chennai. While he was being cross examined, he has been confronted with the said tender of pardon, he wanted to answer the question only after perusing the original tender of pardon proceedings.

3. In these circumstances, petitioners have filed a petition under Section 91 Cr.P.C to send for those proceedings from the learned XIII Additional Special Judge, CBI cases, Chennai.

4. The trial court noticing the fact that already petitioners are in possession of Ex.P.86, Ex.P.87 which are sufficient for the said purpose dismissed their send for petition.

5. The learned counsel for the petitioners would contend that what was asked for has been misunderstood by the trial court. The trial court was under the impression that tender of pardon was accorded only after recording the confession of PW29, therefore, asking the tender of pardon proceedings is surplus usage.

6. The learned counsel for the petitioners submitted that for putting up effective defence, the very tender of pardon proceedings is necessary to confront PW29.

7. The learned Special Public Prosecutor, CBI cases submitted that sufficient reason has been given by the trial court in the impugned order. It does not suffer from any illegality. The learned Special Public Prosecutor expressed his apprehension that sending for the tender of pardon proceedings may result in stalling the trial proceedings in XIII Additional Special Judge, CBI cases, Chennai.

8. I have considered the rival submissions and perused the impugned order.

9. Section 91 Cr.P.C is intended to enable defence and the prosecution to bring forth any relevant material for rendering a just decision. The defence is expected to put not mere defence, but effective defence. It flows from the Constitutional mandate in Article 22, Constitution of India. As per that a person accused of an offence is entitled to be defended by a lawyer of his choice.

10. In the circumstances, the trial court fell into error in not appreciating the ambit, purport and scope of Section 91 Cr.P.C as well as the purpose for which the send for petition has been filed. Thus, interference of this court is called for.

11. In the circumstances, the impugned order of the learned IX Additional Special Judge, CBI cases, Chennai in CrI.M.P.3552/2015 in C.C.No.30/2011 passed on 19.06.2015 is set aside. The trial court will

send for the entire tender of pardon proceedings in Crl.M.P.No.2537/2011 from the XIII Additional Special Judge, CBI cases, Chennai. It is made clear that as and when the purpose for which the said proceedings were send for, the IX Additional Special Judge, CBI cases, Chennai will immediately retransmit the said proceedings to the XIII Additional Special Judge, CBI cases, Chennai.

12. Accordingly, this Crl.O.P is disposed of.

mrp

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Copy to:

1. The IX Additional Special Judge
for CBI Cases,
IX Additional Special Court,
Chennai.
2. The XIII Additional Special Judge
for CBI Cases,
XIII Additional Special Court,
Chennai.
3. The Special Public Prosecutor,
CBI Cases,
High Court, Chennai.
4. The Inspector of Police,
CBI/SPE/ACB, Chennai.

+ 1 cc to M/s.Lakahmipriya Associates, Advocate SR 37317

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