

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.O.P No.21030 of 2015

Captain Muktesh Kumar Sinha

.. Petitioner

Vs

State: Inspector of Police,
SPE:CBI:ACB
Chennai

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crl.M.P.No.5494 of 2014 in C.C.No.34 of 2012 on the file of the learned XIII Additional Special/Sessions Judge for CBI Cases Chennai and set aside the order passed therein.

For Petitioner : Mr.R.Ravindran
For Respondent : Mr.R.Mahadevan,
Special Public Prosecutor
for CBI cases

ORDER

This Criminal Original Petition has been filed against the order passed in Crl.M.P.No.5494 of 2014 in C.C.No.34 of 2012 by XIII Additional/Sessions Judge for CBI Cases, Chennai.

2. It is averred in the petition that the petitioner has been shown as 2nd accused in C.C.No.34 of 2012 pending on the file of the court below. During pendency of the same, present petition has been filed under section 311 of the Code of Criminal Procedure, 1973, praying to permit the petitioner to examine the officer, who granted permission so as to prosecute the petitioner. Further, it is averred in the petition that sanctioning authority, while granting sanction, has not applied his mind properly. Under the said circumstances, present petition has been filed for getting the relief sought for therein.

3. On the side of the respondent, a detailed counter has been filed, wherein it has been contended to the effect that sanctioning authority, after considering all the materials produced before him, has rightly granted sanction and further the present petition is not legally maintainable and further the concerned case has reached the

stage of Section 239 of Code of Criminal Procedure, 1973 and therefore, present petition deserves to be dismissed.

4. On the basis of the rival contentions raised on either side, the Court below has dismissed the petition. Against the order passed by the Court below, present Criminal Original Petition has been filed.

5. The learned counsel appearing for the petitioner has contended that the petitioner has filed a petition in CrI.M.P.No.5527 of 2014 under section 91 of the Code of Criminal Procedure, 1973 so as to send for his leave application for the purpose of showing that on the date of alleged occurrence, he applied for leave and the same has been allowed and the present petition has been filed only for the purpose of showing that the sanctioning authority has not given sanction by way of applying his mind and the Court below, without considering the purpose for which the said petition has been filed, has erroneously dismissed the same and therefore, the order passed by the Court below is liable to be set aside.

6. The learned Special Public Prosecutor has contended that the Court below has given a specific finding that the concerned case has reached the stage of section 239 of Code of Criminal Procedure, 1973. Under the said circumstances, present petition is not legally maintainable and therefore, the finding given by the Court below is perfectly correct. Under the said circumstances, the dismissal order passed by the Court below need not be set aside.

7. The entire contention put forth on the side of the petitioner is based upon section 311 of Code of Criminal Procedure, 1973, wherein it has been clearly stated that the said section can be invoked at any stage of enquiry or trial of particular criminal proceedings.

8. The only purpose for which the present petition has been filed is that the sanctioning authority has not applied his mind properly, while granting sanction.

9. At this stage, the Court has to look into Section 239 of Code of Criminal Procedure, 1973, wherein it has been explicitly stated that at the time of framing charges, the concerned Magistrate has to look into the materials placed before him and if there is any material to proceed further, charges can be framed.

10. Considering the provision of Section 239 of Code of Criminal Procedure and also considering the fact that the present petition has been filed only for the purpose of showing that the sanctioning authority while granting sanction has not applied his mind properly, it is needless to state that the petitioner is having ample opportunity at the time of framing charges, by invoking section 239 of Code of Criminal Procedure, 1973. With the above observation,

this Criminal Original Petition is liable to be dismissed.

In fine, this Criminal Original Petition is dismissed and the order passed in Crl.M.P.No.5494 of 2014 in C.C.No.34 of 2012 passed by the Court below is confirmed. However, liberty is given to the petitioner to invoke Section 239 of Code of Criminal Procedure, 1973.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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

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