

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Revision Case No.154 of 2008
and
M.P.No.1 of 2008

Boopathy

...Petitioner/
Respondent/Accused

vs.

State

Rep. By Superintendent of Police
CBI/ACB/Chennai
R.C.No.21(A)/96-SPE-CBI./ACB

...Respondent/
Petitioner/Complainant

Criminal Revision Case filed under Section 397 and 401 of Code of Criminal Procedure, 1973 against the order dated 27.12.2007 passed in Crl.M.P.No.2115 of 2007 in C.C.No.10 of 1999 on the file of the Additional Special Judge for C.B.I., cases, Chennai.

For Petitioner : Mr.K.V.Sridharan

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

ORDER

This Criminal Revision Case has been directed against the order dated 27th day of December 2007 passed in Crl.M.P.No.2115 of 2007 in C.C.No.10 of 1999 by the Additional Special Judge Judge for CBI Cases, Chennai.

2. The respondent herein as petitioner has filed the petition in question under Section 154 of the Indian Evidence Act so as to permit the petitioner to treat P.W.87 as hostile witness and the court below has allowed the same. Against the order passed by the court below, the present Criminal Revision case has been filed by the Revision

Petitioner/accused.

3. It is averred in the petition that the petitioner is the complainer in C.C.No.10 of 1999 and one A.Sheik Dawood Fasel has been examined as P.W.87; since he has not supported the case of the prosecution, he has to be treated as hostile witness and in the said circumstances, the present petition has been filed for getting the relief sought for therein.

4. The court below, after considering the divergent submissions made on either side, allowed the petition.

5. The learned counsel appearing for the petitioner has repeatedly contended that the respondent/petitioner cannot maintain the present petition and the court below has erroneously allowed the same and therefore, the order passed by the court below is liable to be set aside.

6. Per contra, learned Special Public Prosecutor (CBI) has contended that since P.W.87 has not supported the case of the prosecution, the prosecution is having discretion to treat its own witness as hostile and in the said circumstances, the present petition has been filed and the court below has rightly allowed the same and therefore, the order passed by the court below does not call for any interference.

7. It is an admitted fact that in C.C.No.10 of 1999, the above said A.Sheik Dawood Fasel has been examined as P.W.87. The present petition has been filed under Section 154 of the Indian Evidence Act so as to treat him as a hostile witness, since he has not supported the case of the prosecution.

8. It is a settled and also a pristine principle of law that a party can treat his/her own witness as hostile, if he fails to support his or her case.

9. In the instant case, the present petition has been filed under Section 154 of the Indian Evidence Act by way of stating that P.W.87 has not supported the case of the prosecution and therefore, the petition in question is legally maintainable and the revision petitioner cannot raise any objection in allowing the present petition.

10. The Court below after considering the diverging contentions raised on either side has rightly allowed the petition.

11. In view of the discussions made earlier, this Court finds no acceptable force in the argument made on the side of the Revision Petitioner/accused and ultimately, this Criminal Revision Case deserves to be dismissed.

In fine, this Criminal Revision Case is dismissed. The order passed in Crl.M.P.No.2115 of 2007 in C.C.No.10 of 1999 by the Additional Special Judge for CBI Cases, Chennai is confirmed. However, it is made clear that the revision petitioner is having liberty to cross-examine P.W.87. Consequently, connected M.P.No.1 of 2004 is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Superintendent of Police
CBI/ACB/Chennai
R.C.No.21(A)/96-SPE-CBI./ACB

2.The Additional Spl.Judge for CBI,
Chennai.

1 CC to Mr.K.V.Sridharan, Advocate SR.No. 42635

सत्यमेव जयते

Crl. Rev.Case No.154 of 2008

VGI (CO)
PSI (02.09.2015)

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