

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2015

CORAM:

THE HON'BLE MR.JUSTICE P.DEVADASS

Crl.O.P.No.6815 & 6882 of 2015

and

M.P.1 of 2015 in Crl.O.P.No.6882 of 2015

R. Marimuthu

.. Petitioner in both cases

Vs.

The state rep. By
Addl. Superintendent of Police,
SPE/CBI/ACB,
Chennai.

... Respondent in both cases

Prayer in Crl.O.P.No.6815 of 2015

This petition has been filed by A8 under Section 482 of the Code of Criminal Procedure, to set aside the order of the XI Additional Court for CBI cases, Chennai passed in Crl.M.P.No.5535 of 2014 in C.C.No. 8 of 2002 on 11.02.2015.

Prayer in Crl.O.P.No.6882 of 2015

This petition has been filed by A8 under Section 482 of the Code of Criminal Procedure, to set aside the order of XI Additional Court for CBI cases in Crl.M.P.No.5534 of 2014 in C.C.No. 8 of 2002 on 11.02.2015.

For Petitioner(both cases): P.Chandrasekar

For Respondent(both cases): S.Bhasuran,
DLA & Spl. Public Prosecutor,
CBI, Chennai Zone.

C O M M O N O R D E R

Since both the petitions arose out of the same Calender Case, they were tagged together and are being disposed of by this

common order.

2. CrI.O.P.No.6815 of 2015 is directed as against the dismissal of CrI.M.P.No.5535 of 2014. It was filed by A8 in C.C.No.8 of 2002 to examine one Muralidharan, a Court Receiver as a court witness.

3. CrI.O.P.6882 of 2015 is directed as against the dismissal of A8's CrI.M.P.No.5534 of 2014 in C.C.No.8 of 2002, which was filed to summon 10 witnesses as Court witnesses, which was rejected by the trial Court.

4. Both the said C.M.Ps were dismissed by the trial court, however, giving him liberty to approach the court at the appropriate time.

5. Aggrieved, the petitioner/A8 has directed these separate Criminal Original Petitions.

6. I have considered the rival submissions, perused the averments in the original petitions and the counter filed by C.B.I.

7. Petitioner/A8 and others were alleged to have committed certain white collar offence and along with other A8 is being prosecuted in C.C.No.8 of 2002 before the learned XI Additional Special Judge, CBI Cases, Chennai. Number of witnesses have been cited on the side of the prosecution.

8. Learned counsel for the petitioner would submit that certain witnesses, who have been left out by the prosecution are required to be examined as court witnesses, that will enable the court to render a correct finding. Further, the learned counsel for the petitioner would submit that in connection with this matter, Court a Receiver has been appointed by a court in Bombay, since through him substantial amount concerning this case has been recovered and he is in possession of some of the property also, which is also a subject matter of this calender case, thus, examination of the said Receiver as a court witness becomes necessary.

9. On the other hand, the learned Deputy Legal Adviser/CBI would contend that the trial is going on. Petitioner wish to derail the trial. He would also submit that already it is a time bound case. The trial of the case is on the run. Now, the petitioner wants to throw some pokes into the running of the wheel of trial. Still, the train of trial has not reached its destination, still the persecution evidence is in the middle.

10. At this juncture, these two petitions have been filed

by A8. The trial Court did not deny any opportunity to him. But, it had as asked him to wait for his chance.

11. Principle of fair trial has been now interpreted to include in Article 21 of Constitution of India. Principle of fair trial has not been expressly stated in any part of the Criminal Procedure Code. But, the entire scheme of criminal justice devised in the Code assures fair trial. Fair trial requires giving of reasonable opportunity to the prosecution and the defence.

12. Section 311 Cr.P.C is intended to render correct finding and render justice. Relevant evidence could be brought to the notice of the court by either side, by prosecution and by the defence. Invoking of Section 311 Cr.P.C is not restricted to any stage. However, it depends upon the stage of the trial of the case. Any non-production of evidence, which will be in the nature of causing prejudice to the accused, it will be against the principle of fair trial. It is also the duty of the State to bring the offender to justice by placing proper, relevant evidence. But, at the same time, mindless resort to section 311 Cr.P.C in the nature of confusing the trial cannot be encouraged. That will affect the principle of fair trial itself.

13. Now, in this case, certain witness, who were stated to be examined by the prosecution have not been produced in the trial court. There is no bar for the defence to call them as a witness, provided, if the court feels that it is relevant, just and necessary. Further, in these type of cases the defence can bring to the notice of the court to the extent of amount recovered. For that purpose, the defence wish to examine the Recovery Officer. But, examining them as court witnesses will not arise. Defence cannot confuse, cannot examine them as court witnesses.

14. Now, the prosecution evidence is going on, on completion of that, the court has to examine the accused on the incriminating aspects in the prosecution under Section 313 Cr.P.C. And thereafter opportunity shall be given to the defence both under section 314 and 315 Cr.P.C to give defence statement and defence evidence. If there is defence witness, the defence shall file list of defence witnesses. Let the case cross section 313 Cr.P.C stage. As rightly ordered by the trial Court, the defence has been given opportunity to approach the trial court at the appropriate time. The appropriate time and stage has been clearly stated in the present order.

15. In the circumstances, this Criminal Original Petitions are dismissed. It is made clear that as and when the petitioner has been examined under section 313 Cr.P.C, the trial court will offer him reasonable opportunity to produce defence witness, if any, and

the trial court will call for list of defence witnesses from him.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

mrp

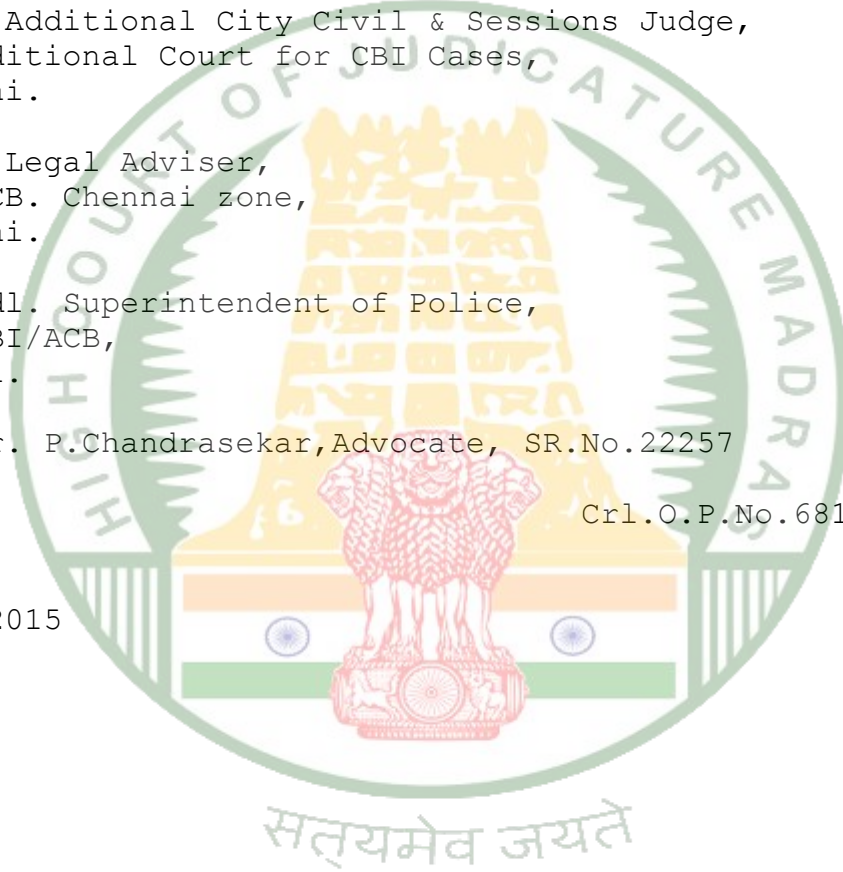
To

1. The XI Additional City Civil & Sessions Judge,
XI Additional Court for CBI Cases,
Chennai.
 2. Deputy Legal Adviser,
CBI/ACB. Chennai zone,
Chennai.
 3. The Addl. Superintendent of Police,
SPE/CBI/ACB,
Chennai.
- 1 cc to Mr. P.Chandrasekar, Advocate, SR.No.22257

CrI.O.P.No.6815 & 6882 of 2015

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pmk.14.5.2015



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