

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2015

CORAM:

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.Nos.28703 and 29169 of 2013  
and M.P.Nos.1 and 1 of 2013

1.S.Shiram  
2.Dasarathy

... Petitioners/Accused Nos.1&2  
in Crl.O.P.No.28703 of 2013

K.Jaganathan

... Petitioner/3<sup>rd</sup> accused in  
Crl.O.P.No.29169 of 2013

Vs.

State Rep. by  
The Inspector of Police  
SP.CBI.A.C.B.  
Chennai.  
(RC 16(A)/2004)  
petitions

... Respondent in both the

The Petitions are filed under Section 482 Cr.P.C. against the order dated 20.09.2013 made in Crl.M.P.No.4215 of 2013 in C.C.No.17 of 2006 on the file of the learned XI Additional City Civil Judge cum Sessions Judge (Special Court for CBI cases relating to Banks and Financial Institutions) Chennai.

For Petitioners : Mr.K.Ramani for Petitioner in  
Crl.O.P.No.28703/13  
Mr.P.V.Sudakar for Petitioner  
in Crl.O.P.No.29169/13

For Respondent : Mr.K.Srinivasan  
Special Public Prosecutor(CBI cases)  
in both Crl.O.P's

C O M M O N O R D E R

Challenging the impugned order dated 20.09.2013 passed in Crl.M.P.No.4215 of 2013 in C.C.No.17 of 2006 by the XI Additional City Civil and Sessions Court (Special Court for CBI cases relating to Banks and Financial Institutions) Chennai, allowing the application under Section 311 Cr.P.C., the present petitions are preferred by the accused persons.

2.Learned counsel for the petitioners submitted that the respondent/CBI has filed an application in CrI.M.P.No.4215 of 2013 for recall the evidence of P.W.20 to mark some documents and also permit them to examine one Ravichandran as additional witness, who is the signatory in the locker operation, to identify the document Ex.P99 and that application was allowed by the Special Court. It is further submitted that the respondent has not filed any document to show that which document they are going to mark through P.W.20 and they have not assigned any reasons as to why additional witness Ravichandran was not cited as witness in the charge sheet. The application filed by the CBI under Section 311 Cr.P.C. itself does not contain any reasons as to why P.W.20 has to be recalled and additional witness Ravichandran has to be examined and that factum was not considered by the Special Court. Hence, he prayed for allowing the petitions.

3.Resisting the same, learned Special Public Prosecutor (CBI cases) submits that during examination of P.W.20, some documents are omitted to mark and hence, they filed an application under Section 311 Cr.P.C., since Ex.P99 document was marked and locker operation has been conducted by the said Ravichandran, he is necessary witness to substantiate the case. It is further submitted that the Special Court after considering all the aspects in proper perspective came to the correct conclusion and therefore, the impugned order passed by the Special Court does not warrant any interference. Hence, he prayed for dismissal of the petitions.

4.Considered the rival submissions made on both sides and perused the typed set of papers.

5.The first point to be decided is that whether the Special Court is correct in permitting the CBI to recall P.W.20 to mark some documents. On perusal of the application under Section 311 Cr.P.C., it reveals that the CBI has not stated which document they are going to mark and whether that document has been filed along with the charge sheet and whether the copy of that document has been furnished to the accused. In my opinion, the CBI without any particulars, has come forward with the application to recall P.W.20. But the Special Court has without considering the fact that the CBI is going to mark which document and whether that document has been filed along with charge sheet, erroneously allowed the application. So I do not find any merits in that application in respect of recalling P.W.20 and hence, the impugned order passed by the Special Court in respect of recalling P.W.20 is unsustainable and therefore, it is hereby set aside.

6.The second point to be decided is that whether the Special Court is correct in permitting the CBI to cite one Ravichandran as additional witness, who is one of the party to the locker operation and the document was marked as Ex.P99. But nothing has been mentioned by CBI in the application filed under Section 311 Cr.P.C.

7.During arguments, learned Special Public Prosecutor (CBI cases) has enlighten this Court that already Ex.P99 was marked, in which the proposed additional witness Ravichandran is the signatory, under such circumstances, an opportunity must be given to the prosecution.

8.Considering the arguments advanced by the learned Special Public Prosecutor (CBI cases), I am of the view, the Special Court is correct in allowing the application in respect of permitting the CBI to cite Ravichandran as additional witness and the impugned order passed by the Special Court in respect of that aspect is hereby confirmed.

9.In fine,

- The Criminal Original Petitions are partly allowed.
- The order passed by the Special Court in respect of recalling P.W.20 is hereby set aside.
- The order passed by the Special Court in respect of permitting the CBI to cite Ravichandran as additional witness is hereby confirmed.
- Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj  
To

1.The Inspector of Police  
SP.CBI.A.C.B.  
Chennai.

2. XI Additional City Civil and Sessions Judge,  
(Special Court for CBI cases)  
Chennai.

3.The Special Public Prosecutor (CBI cases)  
High Court, Chennai.

CrI.O.P.Nos.28703 and 29169 of 2013  
and M.P.Nos.1 and 1 of 2013

rsk(co)  
pmk.21.2.2015