



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2015

CORAM:

THE HONOURABLE MRS.JUSTICE S.VIMALA

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Criminal Original Petition (MD)No.3499 of 2014
and

M.P. (MD)Nos.1 & 2 of 2015

K.Subramanian @ A.K.Subbu

...Petitioner/ 1st Accused.

Vs.

The State Rep. by
The Inspector of Police,
CBI/ACB, SPE/ACB,
Chennai.

.. Respondent/Complainant.

Petition is filed under Section 407 Cr.P.C. to withdraw C.C.No.10 of 2007 on the file of the Principal Special Judge for CBI Cases, Madurai and transfer the same to any other competent Court at Trichirappalli Sessions Division.

For Petitioner : Mr.C.Muthu Saravanan

For Respondent : Mr.S.Jeyakumar

Public Prosecutor for CBI

ORDER

This petition has been filed by the first accused seeking transfer of C.C.No.10 of 2007 from the file of the Principal Special Judge for CBI Cases, Madurai to the file of any other competent Court at Tiruchirappalli Sessions Division. This petition has been filed on the ground that no offence under Prevention of Corruption Act is made out as against this accused person, after the death of the fourth accused, against whom only, an offence under Prevention of Corruption Act has been made out.

2.The brief facts:-

One Smt.Jaya Mari, lodged a complaint before Tiruverumbur Police Station, Trichirappalli in connection with the road accident and the same was registered in Crime No.1051 of 2001 under Sections 279 and 337 IPC against one Packirisamy, the driver of the vehicle bearing registration No.TN-45-E-4116. The case was registered by one Saravanan (A4), the then Sub Inspector of Police and after investigation, charge sheet was laid by him before the learned Magistrate No.VI, Trichirappalli. During trial proceedings, A2 pleaded guilty and he was sentenced to pay Rs.1,800/- as fine. In respect of this incident, A3 filed a claim petition before the District Court, Trichirappalli, claiming compensation and the National Insurance Company took a defence that the claim itself is a fabricated one and therefore, no claim could have been awarded.

<https://hcservices.courts.gov.in/hcservices/> of the defence taken by the National Insurance Company, re-investigation was taken up and after re-investigation, final report was filed in RC MAI 2006 0056, dated 29.11.2006. At the time, when the



charge sheet was filed, A4 viz., Mr.Saravanan, was the only public servant made responsible in that case and he also died later.

3.It appears that except A4, no other person is a public servant. The final report has been filed under Sections 120-B r/w 182, 471, 420 r/w 511 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against all the accused. The case has been now taken on file in C.C.No.10 of 2007.

4.Inasmuch as the only public servant viz., Saravanan (A4) is dead, the contention of the learned counsel for the petitioner is that other persons being non public servant and not having been connected with any offence under Prevention of Corruption Act, cannot be tried by the Special Court as per the provisions of the Prevention of Corruption Act and the case must be transferred on the point of jurisdiction to the concerned Court at Trichirappalli.

5.In support of his contention, the learned counsel for the petitioner relied upon a decision of the Hon'ble Supreme Court reported in 2014-1-L.W.(crl.)707 (STATE THROUGH CBI NEW DELHI v. JITENDER KUMAR SINGH), wherein it has been held as follows:-

"45. The trying of any case under the PC Act against a public servant or a non-public servant, as already indicated, is a sine-qua-non for exercising powers under sub-section (3) of Section 4 of PC Act. In the instant case, since no PC offence has been committed by any of the non-public servants and no charges have been framed against the public servant, while he was alive, the Special Judge had no occasion to try any case against any of them under the PC Act, since no charge has been framed prior to the death of the public servant. The jurisdictional fact, as already discussed above, does not exist so far as this appeal is concerned, so as to exercise jurisdiction by the Special Judge to deal with non-PC offences."

6.On the other hand, the learned counsel for the respondent would submit that the charge under Section 120-B of IPC is likely to be framed on account of available materials produced by the prosecution; If the charge is framed under Section 120-B IPC, the accused persons are liable to be tried only before the special Court as just because one of the main person is dead, the charge of conspiracy will not get eliminated as against rest of the accused persons and in that case, it is only the Special Judge, who would have jurisdiction to try the offence.

7.This contention can be appreciated only when charge is framed. To avoid one more litigation, this Court thought it fit to give a via-media solution.

8.Accordingly, the learned Special Judge for CBI Cases, Madurai shall hear both the parties on charge framing and at the time of charge framing, if any PC offence is made out, then the learned Special Judge, will retain the case and try it and if no PC offence is not made out, then the learned Special Judge shall transfer the case to the concerned Court at Trichirappalli, which will deal with the case. The parties shall



9.The Criminal Original Petition is ordered accordingly.
Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar.

To

- 1.The Special Judge for CBI cases, Madurai
- 2.The Judicial Magistrate No.II, Tiruchirappalli.
- 3.The Inspector of Police, CBI/ACB, SPE/ACB, Chennai.
- 4.The Public Prosecutor for CBI, Chennai.

+1CC to Mr.C.Muthu Saravanan, Advocate, SR.No. 62442.

Cr1.O.P. (MD) No.3499 of 2014
and
M.P. (MD) Nos.1 & 2 of 2015

AM/27.10.2015/SK.SKN/SAR-I/3P/6C