

HON'BLE SMT. JUSTICE ANIS
CRIMINAL REVISION CASE NOS. 112 and 113 OF 2015

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COMMON ORDER:

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Both the revision cases are filed by revision petitioners/A.9 and A.4 respectively under Section 242(3) of the Code of Criminal Procedure praying the Court to defer the cross-examination of LW1 Sri R.M.Khan, Additional S.P., CBI, Hyderabad, presently working in CBI, Mumbai, by the petitioners after recording his chief-examination till the examination of some other witnesses and also the Investigating Officer in the trial of the case.

2. The common contention of the petitioners is that LW1 Sri R.M.Khan being the Additional S.P., CBI, Hyderabad conducted searches at the lockers of the Corporation Bank, Ashok Nagar Branch, Hyderabad on 26.05.2012 in the presence of mediators/officials and made some recoveries and also conducted searches at the houses of some of the relatives and friends of some of the accused who are shown as witnesses and during the course of investigation, he made more recoveries, as such if the cross-examination of LW1 is taken up, it would cause serious prejudice to the defence taken by the petitioners. LW1 is one of the Investigating Officers and his investigation started from 26.05.2012 till the date of entrusting the investigation to the ACB from 07.06.2012 onwards with the registration of a case in Cr.No.8/ACB-CIU-Hyd/2012, as such his cross-examination has to be necessarily deferred till the completion of the evidence of other witnesses who speak about the same facts during the course of their examination, otherwise they will suffer irreparable loss.

3. Before the trial Court, the Special Public Prosecutor

representing the respondents opposed both the petitions.

4. After hearing both sides, the Principal Special Judge for SPE & ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad dismissed both the petitions on the ground that they were premature applications and the petitioners can move to the Court at the appropriate stage and also further held that the petitions filed by the petitioners suggest that the petitioners were motivated to cause some undue delay in the progress of the trial and the petitions were devoid of merits.

5. Aggrieved by the common order of the trial Court, the present revisions are filed by the revision petitioners.

6. The learned Senior Counsel for both the petitioners argued that LW1 Sri R.M.Khan, Additional S.P., CBI sought instructions from DG, ACB for registering of the case and for taking up the investigation and he initiated the investigation, made searches and seized huge amount from the bank lockers in the presence of LWs 15 to 20 and assisted by Investigating Officers of CBI LWs 48 to 51 and without examining the above witnesses, the cross-examination of LW1 cannot be proceeded with and it has to be deferred as the accused have to put omissions and contradictions to LW1 in his cross-examination and this will be for the convenience of parties. It is further argued that the cross-examination has to be deferred till the completion of the evidence of other witnesses who speak about the same facts during their examination. It is also argued that the contention of the respondent that LW1 Sri R.M.Khan who is presently working as Additional SP, CBI, Mumbai has to come from a long distance, cannot be a ground to reject the application of the petitioners. It is further argued that instead of cross-examining the witnesses at first, the respondent is going to examine the

Investigating Officer as LW1 and further, they have no objection for conducting chief-examination of LW1 by the prosecution, but necessarily the cross-examination of LW1 has to be deferred, otherwise it is like a cart before the horse. It is also argued that the petitioners will cooperate for the cross-examination of all witnesses in this case and no unwarranted delay will be caused for the progress of the trial and prayed the Court to allow the revision cases.

7. On the other hand, the learned Standing Counsel for ACB cases filed the Counter and argued that the petitioners failed to put-forth valid grounds in support of their contentions, as such the learned trial Judge dismissed the petitions. It is also argued that no valid reasons were assigned for differing the cross-examination of LW1, but the petitioners by some pretext or other attempted to cause some unwarranted delay in the progress of the trial and the prosecution is entitled to examine the witnesses in a particular order or a sequence as contemplated under Section 138 of the Indian Evidence Act, 1872 depending upon the facts and circumstances of the case. It is also argued that LW1 is presently working as Additional SP, CBI, Mumbai and he has to come from a long distance and in case his evidence is not completed on the date fixed by the Court, that will cause much inconvenience not only to this witness but also to the witnesses who have to examine in quick succession as per the trial schedule. It is further argued that the petitioners have not shown the contingencies to defer the cross-examination of LW1 and further the petitioners have a remedy to recall a witness in case of any genuine cause is shown, therefore the order of the trial Court in dismissing the petitioners needs no interference. It is further argued that the reasons given by the trial Court are perfectly valid and sustainable under law and

finally prayed the Court to dismiss both the petitions with costs.

8. Now, the point for determination is –

Whether the petitioners are entitled to set aside the common order dated 27.01.2015 passed in CrI.M.P.Nos.51 of 2015 and 52 of 2015 in C.C.No.12 of 2012?

9. **Point:**

The petitioners, who are the accused Nos.9 and 4 respectively in C.C.No.12 of 2012, filed the petitions seeking to defer the cross-examination of LW1 Sri R.M.Khan, Additional SP, CBI, Hyderabad till the examination of some other witnesses and also the Investigating Officers in this case.

10. The main contention of the revision petitioners is that LW1 registered the case against the accused, took up investigation, visited the banks, made searches in the lockers and seized huge money in the presence of mediators, bank officials and other Investigating Officers and before examining those witnesses if the cross-examination of LW1 is made, they have no opportunity to put the omissions and contradictions to LW1 and thereby, the petitioners will suffer irreparable loss. It is also contended that LW1 cannot be put for cross-examination at first, but he has to examine at a later point of time.

11. A perusal of Appendix of Evidence shows that LW1 has to speak about his complaint and searches in the bank in the presence of bank officials. The learned counsel for the revision petitioners clearly stated that question of delay in progressing the case of the trial does not arise as the petitioners will cooperate for the examination of all other witnesses produced by the prosecution. Therefore, the contention of the respondent that it will

cause inconvenience to the witness, is not a ground for deferring the cross-examination of LW1. Admittedly, LW1 not only sent his complaint to the DG, ACB, Hyderabad, but also sought for registration of the case and for taking up the investigation. LW1 also received information that some of the associates of the petitioners have transferred huge amount and kept in some of the lockers of the Corporation Bank, Ashok Nagar Branch and on 26.05.2012, searches were made and huge cash was recovered from the lockers of the Corporation Bank. Therefore, in the presence of bank officials and other Investigating Officers, LW1 conducted part of the investigation. Further, LW55 perused the enclosures and investigation done by LW1 and filed the Charge sheet after completion of the investigation.

12. Section 242(3) of Cr.P.C. reads thus:

“On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.”

Ordinarily, examination and cross-examination are to be a continuous process, but the proviso to sub-section (3) vests the Magistrate with a discretion to permit for sufficient reason either the cross-examination of any witness to be deferred until any other witness or witnesses have been examined, or recall any prosecution witness for further cross-examination. ‘Any other witness or witnesses’ refer to prosecution witnesses. The accused has no right to claim the postponement of cross-examination of a

prosecution witness until any other witness or witnesses have been examined, but the direction to defer cross-examination lies with the Court and it will be exercised in a special case where in the circumstances found necessary to postpone the cross-examination of a prosecution witness until the examination of any other prosecution witness for an effective cross-examination of the witness concerned i.e. LW1 herein.

13. In this case, the petitioners have a genuine reason to seek deferment of cross-examination of LW1 as he conducted part of the investigation. Therefore, the finding of the learned trial Judge that the petitions were premature, cannot be accepted. Therefore, by deferring the cross-examination of LW1, it will not in any way cause some unwarranted delay in progress of the trial in view of the readiness of the petitioners in cross-examining all other witnesses. Hence, the point is answered in favour of the revision petitioners.

14. In the result, both the Criminal Revision Cases are allowed setting aside the impugned order dated 27.01.2015 passed in CrI.M.P.Nos.51 of 2015 and 52 of 2015 in C.C.No.12 of 2012 and the cross-examination of LW1 is deferred and his cross-examination shall be taken up before the evidence of Investigating Officer who completed the investigation and filed the Charge sheet into the Court.

15. Miscellaneous petitions pending, if any, in these Criminal Revision Cases shall stand closed.

ANIS, J

Date: 10.02.2015
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