

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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Crl.R.C.No.114 of 2015

ORDER:

The present revision is filed against an order dated 27.01.2015 passed in Crl.M.P.No.132 of 2015 in C.C.No.40 of 2007 on the file of the Special Judge for CBI Cases at Hyderabad, rejecting an application filed by the petitioner/A3 under Section 309 Cr.P.C.

2. The facts in issue disclose that the petitioner herein is an accused in C.C.Nos.39 and 40 of 2007 on the file of the Special Judge for CBI Cases at Hyderabad, wherein he along with two others are charge sheeted for the offences under Sections 120-B, 420, 471 IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. The material on record discloses that earlier, the petitioner herein filed Crl.M.P.No.1972 of 2014 in C.C.No.40 of 2007 seeking recall of P.Ws.1 to 33 for the purpose of cross-examination. The said application was allowed on 12.12.2014 on certain terms and conditions. Pursuant to the said order passed, the trial Court gave schedule for examination of P.W.s 1 to 23 in C.C.No.39 of 2007 and P.Ws.1 to 33 in C.C.No.40 of 2007, which is as under;

In C.C.No.39 of 2007, the schedule is as under:-

P.W.1 and 2- 19/01/2015, P.Ws.3 and 4-22/01/2015, P.Ws.5 to 7- 23.01.2015, P.Ws.8 to 10- 27/01/2015, P.Ws.11 to 14- 29/01/2015, P.Ws.15 to 17- 30/01/2015, P.Ws.18 and 19- 31/01/2015, P.Ws.20 to 23- 2/2/2015"

In C.C.No.40 of 2007, the schedule is as under:-

P.Ws.1 and 2-27/1/2015, P.Ws.3 to 5-28/01/2015, P.Ws.6 to 8- 29.01.2015, P.Ws.9 to 11-30.01.2015, P.Ws.12 to 14-28/01/2015, P.Ws.15 to 17-02/02/2015, P.Ws.18 to 20-03/02/2015, P.Ws.21 to 23-04/02/2015, P.Ws.24 to 26-05/02/2015, P.Ws.27 to 29- 06/02/2015, P.Ws.30 to 33-07/02/2015"

3. While things stood thus, an application in CrI.P.(SR) No.1303 of 2015 came to be filed under Section 482 Cr.P.C seeking quashing of proceedings in C.C.No.40 of 2007 and also requesting the Court for re-fixing of the schedule. It is stated that this Court directed the petitioner herein to make an application before the trial Court under Section 309 Cr.P.C. Pursuant thereto, an application under Section 309 Cr.P.C. was filed on 27.01.2014, which is said to have been rejected. But the said order is not placed on record. Challenging the same, the present revision is preferred.

4. Learned counsel for the petitioner contends that it is difficult to cross-examine the witnesses in both the cases as they are being taken up almost on the same dates. Hence, she seeks adjournment of one C.C. atleast by a week.

5. Learned Standing Counsel for CBI opposed the said contention stating that once the schedule is broken, there is every likelihood of matter getting delayed as the witnesses have to be procured again and having regard to the pendency of the cases in the said Court, it is difficult to get dates in near future.

6. The material on record, as stated above, discloses that a petition under Section 309 Cr.P.C. came to be filed when the trial in both the cases is in progress. As seen from the record, about 10 witnesses were examined in C.C.No.39 of 2007 and 5 witnesses in C.C.No.40 of 2007. Earlier, the petitioner herein filed CrI.M.P.No.1972 of 2014 seeking recall of 33 witnesses. The trial Court was pleased to order recall of 33 witnesses for cross-examination on condition that cross-examination of the witnesses would be done without seeking any adjournment. It was further observed that non-compliance of such condition will amount to dismissal of the said application. In that view of the matter and since the trial is in progress, any order passed interfering with the process of trial would definitely amount to nullifying the order passed in

Crl.M.P.No.1972 of 2014, which has become final.

7. Though not stated in the petition, learned counsel for the petitioner submits that there is a change in the counsel and the counsel on record is not in a position to tackle both the cases together.

8. Having regard to the said circumstances, the Criminal Revision Case is disposed of by directing the Special Judge for CBI Cases at Hyderabad to accommodate the counsel to the extent possible without causing inconvenience to the Court, witnesses and to other cases which are posted on the said dates. Miscellaneous petitions, if any, pending in this revision, shall stand closed.

C. PRAVEEN KUMAR, J

28th January, 2015

Note: Issue CC tomorrow

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