

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.13277 of 2014

ORDER:

The petitioner/A3 challenges the order dated 16.09.2014 in CrI.M.P.No.1035 of 2014 in C.C.No.14 of 2006 passed by the learned Principal Special Judge for CBI Cases, Hyderabad whereunder the learned Judge dismissed the petition filed by A2 to A7 under Section 311 Cr.P.C. to recall PWs.1, 4, 6 and 28 for further cross-examination.

2) The accused in the above CC are facing charges under Sections 120B, r/w 409, 411, 420, 467, 468 and 471 IPC and Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988. The trial was under way and coming for cross-examination of PW52—the Investigating Officer. At this stage, CrI.M.P.No.1035 of 2014 was filed seeking to recall the aforesaid witnesses on the submission that petitioners came to know that FCNR depositor had filed a case before the National Consumer Disputes Redressal Forum, New Delhi against the defacto complainant—bank wherein bank filed counter affidavit stating that there were no irregularities on the part of bank. Apart from it there were some cases pending before the Honourable Supreme Court. The witnesses—PWs.1, 4, 6 and 28 were crucial in this regard as they were hand in glove with the management of FCNR deposits and transfers and other banking business. So, to elicit the facts connecting to counter filed by the bank before the National Consumer Disputes Redressal Forum and the cases pending before the Supreme

Court and also the role of these witnesses in that regard, the above accused sought for recall of those witnesses. However, the trial Court under its impugned order dismissed the above petition mainly on the grounds that those witnesses were cross-examined long back and the matter was coming up for cross-examination of PW52—the Investigating Officer and at this stage it is not apt to recall the witnesses and further, the petitioners/accused can obtain certified copies of the counter filed by the bank before the National Consumer Disputes Redressal Forum and also the cases pending before the Supreme Court and submit to the trial Court for its appreciation and hence for that purpose there is no need of recalling the witnesses at the fag end of the trial.

3) Heard.

4) Impugning the trial Court's order, learned counsel for petitioner/A3 submits that recall of the witnesses is intended not for the mere purpose of filing certified copy of the counter filed by the bank before the National Consumer Disputes Redressal Forum and the cases pending before the Supreme Court, but to elicit the role of those witnesses in those transactions and therefore, the trial Court was not right in rejecting the petition on the sole ground that certified copies could be filed. He submitted that in the interest of justice and fair trial, an opportunity may be given to the petitioner/A3.

5) Learned Public Prosecutor opposed the petition.

6) In the light of above rival arguments, the point for

determination is:

“Whether there are merits in this petition to allow?”

7) **POINT:** Upon hearing both sides, I find force in the submission of learned counsel for petitioner. His submission is that recall of witnesses is intended not for the purpose of mere filing certified copy of the counter filed by the bank before the National Consumer Disputes Redressal Forum and the cases pending before the Supreme Court, but to elicit the role of PWs.1, 4, 6 and 28 in respect of those cases as they are hand in glove with the management of FCNR deposits and transfers and other business transactions. When such is the case, mere filing of certified copy will not effectively establish the defence of the accused. Therefore, I am inclined to allow this petition. However, since witnesses have to come from different places, petitioner/A3 shall bear their expenditure.

8) In the result, this Criminal Petition is allowed with the following directions.

1) The trial Court shall recall PWs.1, 4, 6 and 28 and permit the petitioner/A3 to cross-examine them strictly with reference to the counter affidavit said to be filed by the bank before the National Consumer Disputes Redressal Forum, New Delhi in the case filed by FCNR depositors and also with regard to cases said to be pending before the Honourable Apex Court.

2) The petitioner/A3 shall bear TA (Ill AC charges) and DA to the witnesses as fixed by the trial Court.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 02.03.2015
Murthy