

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.06.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.11322 of 2016

A.Shankar

..Petitioner

Vs.

Deputy Superintendent of Police,
Cyber Crime Cell,
CBCID, Chennai.

..Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order dated 29.04.2016 of the learned XVII Additional Sessions Judge at Chennai in Crl.M.P.No.377 of 2016 in S.C.No.192 of 2009.

For Petitioner : Mr.N.Ramesh
For Respondent : Mr.A.N.Thambidurai, APP

O R D E R

This petition has been filed to set aside the order dated 29.04.2016 in Crl.M.P.No.377 of 2016 in S.C.No.192 of 2009 passed by the learned XVII Additional Sessions Judge, Chennai.

2. Heard the learned counsel for the petitioner; learned Additional Public Prosecutor appearing for the respondent and perused the materials placed on record.

3. It is seen that this petitioner is facing prosecution in S.C.No.192 of 2009 for various offences including offences under Sections 66, 70 and 72 of the Information Technology Act. The gravamen of the allegation against this petitioner is that he was working as an Assistant in the Directorate of Vigilance and Anti Corruption [DVAC]. It is alleged that he had hacked the computer system of the then Director of DVAC and had retrieved invaluable information. During the course of investigation, the petitioner was arrested and released on bail. During the course of trial, the prosecution examined 45 witnesses and the petitioner absconded from January 2014 to April 2016. The petitioner surrendered before the trial Court on 25.04.2016 and the warrant against him was recalled. Thereafter, the petitioner filed an application in Crl.M.P.No.377 of 2016 in S.C.No.192 of 2009 for recalling PW7 to PW45 for cross-examination, which was dismissed by the trial Court on 29.04.2016. Aggrieved by which, the petitioner is before this Court.

4. This Court carefully perused the order of the trial Court and found that the trial in this case has been in progress from 2011 onwards and that, the prosecution has examined witnesses on various dates. The petitioner has cross-examined only very few witnesses and he appears to have deferred the cross-examination of other witnesses. Thereafter, as stated above, the petitioner absconded and later, he surrendered on 21.04.2016.

5. On a conspectus of the facts obtaining in this case, this Court is of the view that the order passed by the trial Court cannot be said to be totally perverse, inasmuch as, it is obvious that the petitioner has been adopting dilatory tactics by not cross-examining the witnesses. However, in a case of this nature, a fair opportunity should be given to him to cross-examine at least some of the witnesses. This Court carefully perused the records and found that the cross-examination of the following witnesses will be essential for a just decision of the case.

- 1) PW13 - Mr.K.Saravanan
- 2) PW14 - Mr.S.Prabakaran, Formerly at DVAC
- 3) PW16- Ms.V.Jayashree, Manager,
Confidential Branch, DVAC, Ch-28.
- 4) PW19 - Ms.Renugadevi
- 5) PW20- Mr.R.Ravikumar, Record Clerk,
LA Office, DVAC, Chennai.
- 6) PW23 - Mr.C.Elango, Spl. Assistant,
DVAC, Chennai-28.
- 7) PW30- Mr.K.Manivannan,
Scientific Assistant Gr-II, Computer Forensic
Unit, TNFSD, Chennai-4.
- 8) PW31 - Mr.N.Vijayarajan,
Formerly Legal Adviser, DVAC, Chennai-28.
- 9) PW32 - Mr.S.Thangaraj
- 10) PW33 - Mr.Saratkar Kapil Kumar Chindurao,
IPS, Superintendent of Police,
Kanniyakumari District.
- 11) PW37 - Mr.Robert, Manager, HCL
- 12) PW38 - Mr.CH.Eswara Sai Prasad,
Assistant Central Intelligence Officer
Gr-I, Computer Forensic Division, GEQD.
- 13) PW43 - Mr.S.Upadhyay, IPS,
Formerly Director of DVAC, Chennai-28.
- 14) PW45 - Mr.S.Balu, Deputy Superintendent of Police,
CBCID, Cyber Crime Cell, Chennai-32.

6. The petitioner shall pay Rs.500/- as cost per witness. The cost shall be paid on the date, the witness comes for giving evidence. When the witness appears before the Court, the petitioner shall cross-examine the witness and boycott of Courts shall not be an excuse as declared by the Hon'ble

Supreme Court in Harish Uppal [Ex.Capt.] Vs Union of India reported in [2003] 2 SCC 45. If the petitioner absconds, it is open for the police to register a fresh FIR against him under Section 229A IPC, which is a cognizable offence and non-bailable offence. Thereafter, the petitioner will forfeit his right to cross-examine the aforesaid witnesses. If the petitioner adopted any dilatory tactics, it is open to the trial Court to remand him to custody under Section 309 Cr.P.C. as laid down by the Hon'ble Supreme Court in State of Uttarpradesh Vs Shambu Nath Singh reported in JT 2001[4] SC 319.

With the above direction, this petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Superintendent of Police,
Cyber Crime Cell,
CBCID, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1 cc to Public Prosecutor, SR.33524

+ 1 cc to Mr.N. Ramesh, Advocate SR.9757(23.06.2016)

Cr1.O.P.No.11322 of 2016

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