

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.15290 of 2016 and Crl.M.P. No. 7566 of 2016

A. Shankar

Petitioner

vs.

The Deputy Superintendent of Police
Cyber Crime Cell
CB CID
Chennai

Respondent

Criminal Original Petition filed under Section 407 Cr.P.C., to withdraw the case in S.C. No.192 of 2009 on the file of the XVII Additional Sessions Judge at Chennai and to transfer the same to the file of any other competent Sessions Judge at Chennai for fair trial.

For petitioner Mr. N. Ramesh

For respondent Mr. A.N. Thambi Durai
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed seeking to withdraw the case in S.C. No.192 of 2009 on the file of the XVII Additional Sessions Judge at Chennai and to transfer the same to the file of any other competent Sessions Judge at Chennai for fair trial.

2 Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3 It is seen that the petitioner is facing trial in S.C. No.192 of 2009 for offences under Sections 66, 70 and 72 of the Information Technology Act. During the course of trial, the petitioner absconded and he surrendered only on 25.04.2016, pursuant to which, the Trial Court has accepted his surrender and recalled the warrant without even remanding him to custody. Thereafter, the petitioner filed an application under Section 311 Cr.P.C. for recalling certain witnesses which was dismissed by the Trial Court on 29.04.2016 and the petitioner has approached this Court in Crl.O.P. No.11322 of 2016, in which,

this Court, after hearing the petitioner and the learned Additional Public Prosecutor, passed a detailed order dated 17.06.2016, directing the Trial Court to recall 14 witnesses for the purpose of cross examination on payment of costs of Rs.500/- per witness.

4 It is the grievance of the petitioner that despite the order dated 17.06.2016 passed by this Court, the Trial Court went ahead with the examination under Section 313 Cr.P.C., without recalling the witnesses. That apart, the petitioner has also stated that he has taken exception to certain remarks that are said to have been made by the Trial Judge and therefore, the petitioner is before this Court for transfer of the case.

5 Mr. N. Ramesh, learned counsel for the petitioner, submitted that the Trial Court ought not to have proceeded with the examination of the accused under Section 313 Cr.P.C. before witnesses were cross-examined and in support of this contention, he relied upon a judgment of this Court in B. Chinraj vs. Assistant Collector of Central Excise, CDJ 1988 MHC 240.

6 This Court gave its anxious consideration to the submissions made by the learned counsel on either side.

7 The order dated 17.06.2016 passed by this Court in CrI.O.P. No.11322 of 2016 has unfortunately not been marked to the Trial Court by the Registry officials and therefore, the Trial Court did not have the order on 20.06.2016. Though the order was passed on 17.06.2016, it was made ready only on 23.06.2016 and the Registry has sent the order to the Deputy Superintendent of Police (Cyber Crime Cell), CB-CID and to the Public Prosecutor of the High Court. Normally, the Registry should have taken care to ensure that a copy of the order reached the Trial Court. But, for the fault of the Registry, the Trial Judge cannot be blamed. Admittedly, this case is of the year 2009 and there is a compulsion on the part of the Trial Courts to complete the old cases and not keep them on file as that would cause prejudice to both the parties.

8 Mr. N. Ramesh submitted that the Trial Judge had even addressed a letter to the Principal Sessions Judge, City Civil Court, Chennai, for transfer of this case out of his board.

9 If the Trial Judge had any personal interest in the case, he would not have resorted to this extreme step of addressing a communication to the Principal Sessions Judge for transfer of this case from his board. This only shows that the Trial Judge has been tormented to such an extent that he had to take this extreme decision of addressing the Principal Sessions Judge for transfer of the case. This Court is unable to

countenance the various allegations made by the petitioner in his affidavit stating that he does not have faith in the Trial Judge.

10 In the result, this Criminal Original Petition is dismissed. However, the Trial Judge is directed to recall the witnesses pursuant to the order dated 17.06.2016 passed by this Court in Cr.O.P. No.11322 of 2016 and after completing the investigation, if there are incriminating materials, the Trial Judge shall further examine the petitioner under Section 313, Cr.P.C. so that he gives his explanation for the same. Connected Crl.M.P. is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1 The Deputy Superintendent of Police
Cyber Crime Cell
CB CID
Chennai
2. -do- Thro The Principal Sessions Judge,
Chennai
- 3 The XVII Additional Sessions Judge
Chennai
4. The Public Prosecutor
High Court Chennai

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Cr1.O.P. No.15290 of 2016

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