

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.10.2016

PRONOUNCED ON : 03.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.765 of 2016
and Crl.MP.No.5755 of 2016

State represented by
Inspector of Police,
SPE : CBI : EOW : Chennai.Petitioner/Complainant

Vs.

1.T.Rajasekharan
2.R.Natesh KumarRespondents/Accused 1 & 2

PRAYER: Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to set aside the order dated 29.03.2016 made in CC.No.12619 of 2003 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.K.Srinivasan, Spl.PP.
For respondents: Mr.V.Venkatesh.

O R D E R

This Criminal Revision is directed against the order passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai made in CC.No.12619 of 2003 dated 29.03.2016, directing the Superintendent of Police, CBI, EOW, Chennai to trace out and produce the documents.

2.The learned Special Public Prosecutor for CBI cases has mainly contended that the trial Court has not given any reason for not accepting the affidavit dated 28.03.2016 filed by the Inspector of Police. The trial Court failed to appreciate the photo copy of the summoned document and erred in holding that the High Court has directed the Superintendent of Police, CBI, EOW, Chennai to produce the said document. The learned Special Public prosecutor further contended that only the trial Court in Crl.MP.No.80 of 2009 has directed the Superintendent of Police, CBI, EOW, Chennai to produce the following documents viz., (i) complaint dated 06.01.1995 and (ii)subsequent correspondent addressed by the Indian Overseas Bank to CBI and the High Court by its order dated 20.11.2015 confirmed the order of the trial Court with regard to the complaint dated 06.01.1995 and dismissed the other claim.

3.Originally, the accused filed Crl.MP.No.96 of 2001 under Section 91 Cr.PC before the trial Court to produce certain documents to defend the case and to cross examine the witnesses, the said petition was dismissed by the trial Court. Thereafter, the accused filed another Crl.MP.No.80 of 2013 under Section 91 Cr.PC to issue summons to the Assistant General Manager, IOB, Chennai and to direct the Superintendent of Police, CBI, EOW, Chennai to produce the complaint dated 06.01.1995, the trial Court allowed the petition directing to issue summons to the Assistant General Manager, IOB, Chennai and directed the Superintendent of Police, CBI, EOW, Chennai to produce the complaint dated 06.01.1995 and subsequent correspondence addressed by the IOB to CBI. Against the said orders, the accused has preferred Crl.OP.No.20107 of 2009 and the State has preferred Crl.OP.No.2458 of 2014 before this Court. This Court by an order dated 20.11.2015, allowed the Crl.OP.No.20107 of 2009 and set aside the order made in Crl.MP.No.96 of 2001 and partly allowed the Crl.OP.No.2458 of 2014 and the order passed by the trial Court in Crl.MP.No.80 of 2013 is confirmed only with regard to the complaint dated 06.01.1995 and the set aside the order with regard to second document.

4.Pursuant to the order of this Court dated 20.11.2015, the Inspector of Police, filed an affidavit dated 28.03.2016 before the trial Court in CC.No.12619 of 2003, stating that after elaborate search and scrutiny made in the branches the documents could not be located, the records pertains to the year 1995 and not able to trace the records from the office of CBI, EOW, Chennai and hence the office copy of the complaint dated 06.01.2015 has been produced by the IOB, Chennai, the same is produced before the trial Court by the IO. The trial Court without considering the above fact, directed the Superintendent of Police, CBI, EOW, Chennai to trace out the record and produce the documents. Aggrieved against the said order, the State is before this Court by way of present revision.

5.Heard the rival submissions made on both sides and perused the records.

6.The complaint in CC.No.12619 of 2003 is the Inspector of Police, SPE, CBI, EOW, Chennai, had filed the affidavit dated 28.03.2016 before the trial Court stating that after elaborate search and scrutiny made in the branches the documents could not be located, the records pertains to the year 1995 and not able to trace the records from the office of CBI, EOW, Chennai and hence the office copy of the complaint dated 06.01.1995 has been produced by the IOB, Chennai. The trial Court failed to appreciate the fact that only the trial Court in Crl.MP.No.80 of 2013 has directed the Superintendent of Police, CBI, EOW, Chennai to produce the complaint dated 06.01.1995 and subsequent correspondence addressed by the Indian Overseas Bank to CBI, but this Court in its order dated 20.11.2015 dismissed the said claim. Without considering the fact that the Inspector of

Police who has filed the affidavit is the Complainant. The trial Court erred in not considering the affidavit filed by the Inspector of Police and directed the Superintendent of Police, CBI, EOW, Chennai to trace out the records and produce the documents. The reasons stated in the order dated 29.03.2016 for not accepting the affidavit filed by the Inspector of Police, SPE, CBI, EOW, Chennai is not acceptable either under law or on facts. Though, Superintendent of Police has not produced the documents as directed by the trial Court. Since as the Complainant/Inspector of Police had filed an affidavit stating that after elaborate search and scrutiny made in the branches the documents could not be located, the records pertain to the year 1995 and not able to trace the records from the office of CBI, EOW, Chennai and hence the office copy of the complaint dated 06.01.1995 has been produced by the IOB, Chennai. This Court is inclined to accept the affidavit filed by the Inspector of Police and by considering the xerox copy of the complaint dated 06.01.1995 as secondary evidence in the absence of original complaint dated 06.01.1995, the same will not be prejudiced to the case of the accused and the order passed by the trial Court in CC.No.12619 of 2013 dated 29.03.2016 is liable to be set aside and accordingly the same is hereby set aside.

7. In the result, the criminal revision is allowed by setting aside the order dated 29.03.2016 passed in CC.No.12619 of 2013 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai. The trial Court is directed to consider the copy of the complaint dated 06.01.1995 as secondary evidence and to proceed with the trial, in accordance with law. The trial Court is further directed to dispose of the main case in CC.No.12619 of 2003 within a period of three months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.The Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2.The Chief Metropolitan Magistrate, Egmore, Chennai.

3.The Inspector of Police, SPE; CBI; FOW; Chennai.

4.The Special Public Prosecutor,
for CBI Cases, High Court, Madras.

+1 cc to Mr.K.Srinivasan, advocate, sr.62381

lrs(co)

krd 24/11

Cr1.R.C.No.765 of 2016