

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 26.08.2016)

DATED: 8.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.O.P.Nos.18226 & 18227 of 2016

and

Crl.M.P.Nos.8645 & 8646 of 2016

S.Murugan

.. Petitioner in both Crl.OPs

Vs.

The Inspector of Police,
Vigilance & Anti-Corruption,
Salem-4.

.. Respondent in both Crl.OPs

Criminal Original Petitions filed under Section 482 Cr.P.C. to call for the records relating to the orders dated 05.07.2016 passed in Crl.M.P.Nos.461 & 462 of 2016 in Spl.C.C.No.13 of 2014 on the file of the learned Special Judge for Vigilance and Anti-Corruption Cases, Salem and to quash the same.

For Petitioner : Mr.C.S.Kiran

For respondent : Mr.P.Govindarajan, Addl.P.P.

COMMON ORDER

These Criminal Original Petitions have been filed by the petitioner praying to quash the orders dated 05.07.2015 passed by the learned Special Judge for Vigilance and Anti-Corruption Cases, Salem, in Crl.M.P.Nos.461 & 462 of 2016 in Spl.C.C.No.13 of 2014, respectively, in and by which, the petitions filed by the respondent/prosecution under Sections 216 and 173(8) of Cr.P.C., to frame additional charges and to file additional documents, were allowed.

2.The petitioner herein has been arrayed as 2nd accused in this case. The 1st accused Nagarajan is working as Revenue Assistant and the petitioner herein/A2 is working as Watchman/Addl.Revenue Assistant. It is alleged by the prosecution that 8 days prior to 29.01.2002 at about 15.00 hours, at the house of the defacto-complainant Perumal, the accused persons had demanded an illegal gratification of Rs.1,200/- from the defacto-complainant for making arrangement

to assess house tax and to issue tax receipts to the defacto-complainant's house and his daughter's house. Again, on 29.01.2002, the 1st accused reiterated the demand at his office at about 15.00 hours in the presence of the petitioner/A2. In pursuance of the said demand, as per the directions of the 1st accused, on 30.01.2002 at about 16.15 hours at the entrance of the accused's office under the banyan tree, the petitioner/A2 demanded and accepted Rs.1,200/- from the defacto-complainant as an illegal gratification/award for making arrangement to assess house tax for the complainant's house and his daughter's house; thereby, the accused committed the offence punishable under Sections 7, 13(2) & 13(1)(d) of the Prevention of Corruption Act. After completion of investigation, final report was filed by the respondent and the same was taken on file as Spl.C.C.No.13 of 2014 on the file of the learned Special Judge for Anti-Corruption Cases, Salem. Thereafter, charges were framed against the accused persons by the Trial Court. Thereafter, 9 witnesses were examined and Investigating Officer has to be examined.

3.While so, the Prosecution has filed two petitions before the Trial Court; one petition was filed under Section 216 of Cr.P.C seeking to frame additional charges with regard to the prior demand and reiteration of demand made by the accused persons; another petition was filed under Section 173(8) of Cr.P.C, seeking to file additional documents viz., letters sent by the Commissioner, Panchayat Union, Salem and the Tahsildar, Taluk Office, Salem, to the Inspector of Police, Vigilance and Anti-Corruption, Salem, regarding the officials sent for the trap. The said petitions were allowed by the Trial Court by the impugned order. Aggrieved over the same, the petitioner has come forward with the present petitions before this Court.

4.The learned counsel for the petitioner submitted that the objections were raised by the petitioner before the Trial Court; but, without considering the objections raised by the petitioner, the trial Court has allowed the petitions filed by the prosecution. It is further submitted by the learned counsel for the petitioner that the alteration sought for by the prosecution in the chargesheet is purely an afterthought, which would frustrate the effective cross-examination done by the petitioner/accused. Further, the documents purported to be marked are the very basis of a Trap case and failure to file them in the final report might be fatal to the prosecution case and allowing the prosecution to file them after all List of Witnesses as per the Final Report have been examined would irreparably harm the petitioner/accused. Thus, the learned counsel for the petitioner sought for setting aside the impugned orders passed by the Trial Court.

5.The learned counsel Additional Public Prosecutor appearing

for the respondent, by filing detailed counters, would contend that as per the provisions of Section 216 of Cr.P.C., the Trial Court has enormous power to alter/amend the charge at any time before the judgment is pronounced, if such alteration/amendment or addition is necessary to ensure fair trial. Similarly, as per the provisions of Section 173(8) of Cr.P.C., the Trial Court has enormous power to receive additional documents collected by the Investigating Officer, even subsequent of the filing of final report. In this regard, the learned Additional Public Prosecutor has also relied upon the judgement of the Hon'ble Supreme Court in Appeal (Crl.) No.1045 of 2000, dated 03.04.2002 in the case of CBI Vs. R.S.Pai and another.

6. Heard both sides and perused the materials available on record.

7. At the outset, it would be appropriate to extract Section 216 of Cr.P.C, which reads as follows

"216. Court may alter charge.

(1) Any court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the court to prejudice the accused in his defence or the prosecutor in the conduct of the case the court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the court to prejudice the accused or the prosecutor as aforesaid, the court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or

added charge is one for the prosecution of which previous section is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

From a reading of the above provisions, it is clear that absolutely there is no prohibition for the Trial Court to alter the charges before delivering the judgment. When that being the legal position, I do not find any substance in the submissions made by the learned counsel for the petitioner with regard to the order passed by the trial altering the charges. Similarly, with regard to filing of additional document, as contended by the learned Additional Public Prosecutor, absolutely there is no prohibition under law for filing additional documents even after filing of final report.

8.Hence, I do not find any merit in both the criminal original petitions and the same are liable to be dismissed. Accordingly, both the Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ssv

Copy to

1. The Special Judge for Vigilance and Anti-Corruption Cases, Salem.
2. The Public Prosecutor, High Court, Madras.
3. The The Inspector of Police, Vigilance & Anti-Corruption, Salem-4..

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and
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EV(CO)
EU 28.09.16