

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2016

CORAM :

THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.O.P. No.2193 of 2016

R.Rajasegaran

... Petitioner

Vs.

State by;

Dy. Supdt., of Police,
SPE/ACB/CBI,
Chennai

... Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set-aside the Memo Order dated 18.01.2016 passed on the petitioner's memo dated 18.1.2016, in the case pending trial in C.C.No.8650/2000 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore at Allikulam.

For Petitioner : Mr.E.J.Ayyappan

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI

O R D E R

A4 in C.C.No.8650/2000 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore challenges the rejection of his memo dated 18.1.2016 whereunder the trial Court had refused to summon P.Ws. 51, 94, 111 and 112 for his cross-examination.

2. According to the learned counsel for the petitioner, the petitioner is entitled to put his defence effectively, it becomes necessary for him to cross the said PWs, however, this aspect has been overlooked by the trial Court.

3. The learned Special Public Prosecutor for CBI submits that the memo has been filed with reference to the orders of the trial Court passed in CrI.M.P.No.3254/2015 dated 31.12.2016, however, the witnesses sought to be summoned through the said memo are not covered in the said order dated 31.12.2016. Taking a cue from few lines in paragraph 2 of the said memo to the effect that he also intends to recall other witnesses, the learned Special Public Prosecutor submits that the petitioner intends to derail the ongoing trial.

4. In reply, the learned counsel for the petitioner submits that there is no intention on the part of the accused to procrastinate the trial and petitioner is very much interested in the cross examination of P.Ws. 51, 94, 111, 112 only.

5. I have considered the rival submissions, perused the impugned order dated 18.01.2016 and also the materials on record.

6. It is an undeniable fact that in C.C.No.8650/2000 a marathon trial is going on before the trial Court and it is going on for more than 15 years. But, that does not mean the Constitutional right of the accused to defend himself could be curtailed. But, at the same time, it does not mean that there is right in the accused to prolong the trial. These extreme views have to be harmoniously construed. Section 311 of Cr.P.C is not one way, it is two way. It is both for the defence as well as for the prosecution. In either case the judicial discretion vested in the Court must be exercised reasonably. Any attempt to delay under a pretext should be scuttled. The pivotal point is whether such an exercise is really required to offer him a reasonable opportunity to defend himself and whether it is necessary to render a just decision in the case.

7. Now, in this case, A4 was choosy in choosing P.Ws.1 to 10 for his cross-examination and the trial Court was also choosy in choosing only 7 out of 10 PWs for his cross-examination. But the accused, again started exercising his choice, but he did not confine to the contours of the orders of the trial Court dated 31.12.2015 as in his memo dated 18.1.2016 he sought to some P.Ws. 51, 94, 111, 112 who were not covered in the order dated 31.12.2015. This Court cannot expand the scope of the order dated 31.12.2015. Therefore, we have to uphold the impugned order of the trial Court dated 18.1.2016 for other

reasons also. However, as stated already, reasonable opportunity should be given to the defence side.

8. In the circumstances, this Crl.O.P. is dismissed with liberty to the petitioner/A4 to file a fresh petition under Section 311 Cr.P.C for recalling P.Ws. 51, 94, 111, 112, if he is so advised and in case such a petition is filed, the trial Court will dispose of the same at an early date on merits after hearing both sides.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional Chief Metropolitan Magistrate,
Egmore at Allikulam, Chennai.
- 2.The Special Public Prosecutor,
CBI, Madras
- 3.Deputy Superintendent of Police,
SPE/ACB/CBI,
Chennai.

+1cc to Mr.E.J.Ayyappan, Advocate, S.R.No.6481

Crl.O.P. No.2193 of 2016

AK(CO)
CA(03/02/2016)

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