

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25-01-2016

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Original Petition No.251 of 2016
and
Crl.M.P.No.122 of 2016

J. Swaminathan

Petitioner

Vs.

The State Represented by
The Inspector of Police
Central Bureau of Investigation
Economic Offences Wing
Chennai

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C., seeking the relief to call for the records culminated in the order dated 23-12-2015 in Crl.M.P.No.3151 of 2015 in C.C.No.458 of 2013 pending on the file of the Additional Chief Metropolitan Magistrate, Egmore (now at Moore Market Complex, Allikulam) and set aside the same and pass orders.

For petitioner :: Mr. Ashok Kumar, SC
for M/s.BFS Legal
and P.V.Balasubramaniam

For respondent :: Mr. K. Srinivasan,
Spl.P.P. for CBI cases

ORDER

This Criminal Original Petition has been filed against the order dated 23-12-2015 passed in Crl.M.P.No.3151 of 2015 in C.C.No.458 of 2013 pending on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. The respondent herein as petitioner has filed Crl.M.P.No.3151 of 2015 in C.C.No.458 of 2013 under Section 311 of the Code of Criminal Procedure, 1973 praying to permit him to file the documents mentioned therein as additional evidence, wherein the present petitioner has been shown as sole respondent.

3. It is averred in the petition that the documents mentioned therein are not available at the time of filing final report and further, the said documents have already been sent to Forensic Science Laboratory, Hyderabad and subsequently, the same have been received. Under the said

circumstances, the present petition has been filed for getting the relief sought therein.

4. On the side of the respondent a detailed counter has been filed wherein it has been contended inter alia to the effect that the present petition is not legally maintainable under Section 311 of the Code of Criminal Procedure, 1973 and further, copies of documents have not been furnished to the respondent and the present petition deserves to be dismissed.

5. On the basis of the divergent submissions raised on either side, the Trial Court has allowed the petition and against the order passed by the Trial Court, the present criminal original petition has been preferred at the instance of the respondent.

6. The learned counsel appearing for the petitioner has contended that Section 311 of the Code of Criminal Procedure, 1973 is not an enabling Section to grant the relief sought in the petition and at the most the petitioner/respondent can invoke Section 173(8) of the said Code. But, even though, wrong provision of law has been quoted in the present petition, the Trial Court has allowed the same and therefore, the order passed by the Trial Court is liable to be set aside.

7. Per contra, the learned Special Public Prosecutor has contended that Section 311 of the Code of Criminal Procedure, 1973 is not an enabling Section for getting the relief sought therein. But, however, quoting wrong provision of law is not a sole ground for rejecting the petition and further, the documents mentioned therein are very much essential for the purpose of proving the case of the prosecution and the Trial Court after considering the rival contentions raised on either side has rightly allowed the petition and therefore, the order passed by the Trial Court does not warrant any interference.

8. It is an admitted fact that the present petition has been filed under Section 311 of the Code of Criminal Procedure, 1973. As rightly pointed out on the side of the petitioner, Section 311 of the Code of Criminal Procedure, 1973 is not an enabling Section to grant the relief sought in the petition. But, as rightly pointed out on the side of the respondent quoting wrong provision of law is not a ground for dismissing the petition.

9. The main averments made in the petition are that the documents mentioned therein have not been filed along with the final report, since the same have been sent to Forensic Science Laboratory, Hyderabad.

10. Considering the reasons given in the petition and also considering the fact that the documents mentioned therein are very much essential for the purpose of proving the case of the prosecution, the order passed by the Trial

Court is perfectly correct and the same does not call for any interference.

In fine, the criminal original petition is dismissed. The order passed in Crl.M.P.No.3151 of 2015 in C.C.No.458 of 2013 dated 23-12-2015 is confirmed. However, the Trial Court is directed to furnish copies of documents to the petitioner/respondent, before commencement of trial. The connected Crl.M.P.No.122 of 2016 is closed.

-sd/-
Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

glp

To

1. The Inspector of Police
Central Bureau of Investigation
Economic Offences Wing
Chennai

2. The Additional Chief Metropolitan Magistrate, Egmore
Now at allikulam commercial complex, Chennai-3.

+ cc to BFS LEGAL, ADVOCATES VIDE SR.NO. 4580/16

Criminal Original Petition No.251 of 2016

MP[CO]

RD5/2/16.

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