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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2016

CORAM:

THE HONOURABLE DR. JUSTICE P.DEVADASS

Crl.O.P. (MD) No.5108 of 2016

T.Mohan

... Petitioner/Petitioner/Accused No.8

-vs-

The State represented by,
The Inspector of Police,
SPE/CBI/ACB/CHENNAI,
Chennai.

(F.I.R.No.RC MA1 2003 A 0018

Dated 04.04.2003)

... Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition is filed, under Section 482 Cr.P.C., to call for the entire records pertaining to the order passed in Crl.M.P.No.310 of 2016 in C.C.No.4 of 2006 by the learned II Additional District Judge for CBI Cases, Madurai and to set aside the same and consequently to direct the above said learned Judge to recall the P.W.15 of the said case for cross examination.

For Petitioner : Mr.R.Anand

For Respondent : Mr.S.Jeyakumar

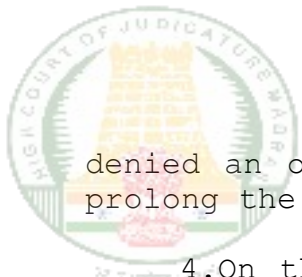
Special Public Prosecutor for C.B.I. Cases

O R D E R

As against the refusal of the C.B.I. Court, Madurai to recall P.W.15, A8 who has failed to that extent in Crl.M.P.No.310 of 2016 in C.C.No.4 of 2006 has directed this revision.

2. There are 8 accused in this case. They were challaned before the CBI Court, Madurai by the ACB of CBI, Chennai. As one absconded, the balance 7 accused have took up their trial. Revision Petitioner is one of them. Evidence has been let in. The case is posted for defence evidence. Almost it is on its last journey. At this juncture revision petitioner woke up. Filed Crl.M.P.No.310 of 2016 to recall P.Ws.15, 42, 48 and 51. He succeeded in recalling them, except P.W.15. That is how this revision.

3. According to the learned counsel for the revision petitioner, in his chief examination P.W.15 has adduced incriminating evidence as against the revision petitioner. He had spoken about Vasantha, wife of the revision petitioner. He had also spoken about Ex.P.117 Sale Agreement and Ex.P.118 endorsement stated to be the signature of the revision petitioner. In the facts and circumstances, it becomes necessary for the revision petitioner to test the veracity of his evidence on the altar of cross examination. Otherwise his defence in this case will not be effective and he will be prejudiced. Of course, earlier similar petition was filed and it was also ordered, but it was not implemented. Steps for bringing the witness has not been taken. It is because of various reasons and on that account the defence cannot be



denied an opportunity to cross examine P.W.15. It is not an attempt to prolong the trial of the case.

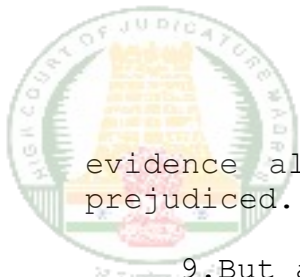
4. On the other hand, the learned Special Public Prosecutor for CBI cases submitted that long rope has already been given. Sufficient time has been taken by the revision petitioner. He was so lethargic and negligent in prosecuting his defence with regard to P.W.15. In a recent decision, the Hon'ble Apex Court came down heavily on the deferring of the cross and spoiling the progress of the trial of the criminal case. In such circumstances, the CBI Court has taken a tough stand with regard to P.W.15 while giving opportunity with respect to other witnesses and it had rightly rejected his recall petition with respect to P.W.15. The revision petitioner has filed this petition to delay the trial of the case.

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

6. Unlike in a civil case risk is very much in a criminal case. In a Civil case rights and liabilities of the parties are involved. But in a Criminal case right to personal liberty of a person is involved. A small slip will land him in jail. It will affect his family. A whole family will be ruined by a wrong judgment. That is why Constitution Makers inserted right of defence as a fundamental right in Article 22(1) of the Constitution of India. Defence shall not be mere defence, it shall be effective defence. A person accused of an offence is entitled to be defended. This defence includes right to cross-examine witness who gave incriminating evidence against the accused. Reasonable opportunity shall be given to the accused to exercise this right. It is a matter of principles of natural justice and fundamental judicial procedure. But at the same time under the guise of right of defence an accused cannot take the prosecution and the Court for a jolly ride. He should not be allowed to delay the trial process. He should not be allowed to stage a gimmick. Such an attitude should be nipped at the bud.

7. Recently the Hon'ble Apex Court came down heavily upon the Courts for deferring the cross examination of prosecution witnesses. The Hon'ble Apex Court strongly advocated discouraging of such deferring of cross-examination. But in the judgment the Hon'ble Apex Court has not taken away the right of defence under Article 22(1) of Constitution of India, which has been again reiterated in Section 303 Cr.P.C. Nowhere in the said judgment the Hon'ble Apex Court says that the defence should be prejudiced. Nowhere in the judgment it said right of defence shall be taken away. So, for a real purpose accused can be given an opportunity. But when an accused intends to prolong the case, the Court should nip it at the bud.

8. Coming to the present case, the revision petitioner has been implicated in this case and there were specific allegations against him in the final report. Charges have been framed against him. As per prosecution version certain incriminating documents and evidence has been let in with reference to Vasantha wife of the revision petitioner through P.W.15 and Ex.P.117 and P.118 have also been marked. In such circumstances, according to the accused, if this piece of incriminating



evidence allowed to remain unchallenged, the accused will be greatly prejudiced. I find great substance in the submissions.

9. But at the same time the revision petitioner slept over for a long time. He is a Rip van winkle raising from his long slumber. But he is an accused who has to put up effective defence. Incriminating evidence through P.W.15 has been let in. On account of long delay we cannot deny him an opportunity. Delay cannot be allowed to defeat justice.

10. In the circumstances, ordered as under:

(1) This revision is allowed.

(2) The impugned order of the learned II Additional District Judge for CBI Cases, Madurai passed in Crl.M.P.No.310 of 2016 is modified by allowing recalling of P.W.15.

(3) The trial Court upon hearing the defence and prosecution will fix a date for recalling P.W.15 for the cross-examination of the revision petitioner.

(4) It is made clear that on the date when P.W.15 was present in the Court, his cross-examination shall not be deferred.

(5) The expenses covering to and from expenses and daily allowance of P.W.15 shall be deposited by the revision petitioner before the trial Court within 3 days of receipt of a copy of this order.

Sd/

Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar

To:

1. The II Additional District Judge for CBI Cases,
Madurai

2. The Special Public Prosecutor for CBI Cases,
Madurai Bench of Madras High Court,
Madurai.

3. The Inspector of Police,
SPE/CBI/ACB/CHENNAI,
Chennai.

+1cc to M/S.R.Anand, Advocate in SR.No.31068

Crl.O.P. (MD) No.5108 of 2016
15.06.2016

sj

PA/AAL-MPA/SAR III/17.06.2016/3P/5C (IT)