

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.14520 OF 2016

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C. to quash the order dated 07.09.2016 passed in CrI.M.P.No.561 of 2016 in C.C.No.13 of 2008 on the file of the Court of the I Additional Special Judge for C.B.I. Cases, Visakhapatnam.

2. Heard Sri K.Raja Reddy, the learned counsel for the petitioners and Sri K.V.Vidya Sagar, the learned Standing Counsel for C.B.I.

3. The contention of the learned counsel for the petitioners is two fold: (1) the present petition is filed to delay the proceedings, and (2) if PW.43 is recalled and the proposed documents are marked, it may cause prejudice to the petitioners; therefore, it is a fit case to allow the petition.

4. *Per contra*, the learned Standing Counsel for C.B.I. submitted that by oversight the prosecution could not mark the listed document Nos.27, 29, 75 and 61. He further submitted that the Investigating Officer has not been confronted with Section 161 Cr.P.C. statements of PWs.28, 32, 35 and 38; therefore, the prosecution filed CrI.M.P.No.561 of 2016 in C.C.No.13 of 2008. He also submitted the no prejudice will be caused to the petitioners even if the petition is allowed.

5. A perusal of the record reveals that the petitioners are facing trial in C.C.No.13 of 2008 on the file of the Court of the I Additional Special Judge for C.B.I. Cases, Visakhapatnam for the

offences punishable under Section 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988 and Section 109 I.P.C. The evidence of both sides was closed long back. When the matter is coming up for arguments, the prosecution filed CrI.M.P.No.561 of 2016 in C.C.No.13 of 2008 to recall PW.43 for the purpose of the confrontation of Section 161 Cr.P.C. statements of PWs.28, 32, 35 and 38 and also to mark list of document Nos.27, 29, 75 and 61. The trial Court after affording a reasonable opportunity to both parties, allowed the petition. Hence, the petition.

6. As rightly pointed out by the learned counsel for the petitioners for one reason or other, the matter is pending for long time. A perusal of the record reveals that there was no regular officer for the trial court since long time. PW.43 is the Investigating Officer in this case. During inventory, he seized list of document Nos.27, 29, 75 and 61 from the custody of the petitioners. List of document No.27 is the Share Certificates, six in number, stand in the name of the first petitioner; list of document No.29 is a registered sale deed wherein the first petitioner is a vendor; list of document No.75 is the telephone bills pertain to the first petitioner and list of document No.61 is the statement of bank account of the first petitioner. It is not in dispute that the prosecution had supplied all these documents to the petitioners under Section 207 of Cr.P.C. As rightly pointed out by the learned counsel for the petitioners, these documents were not shown to PW.43 when he was examined at the earliest point of time. For one reason or other, the Prosecuting Agency has not elicited from P.W.43 that PWs.28, 32, 35 and 38 have stated before him as in their Section 161 Cr.P.C., statements. It is a settled principle of

law that if a witness turns hostile to the prosecution case, those statements have to be confronted with the investigating officer. No prejudice will be caused to the petitioners even if it is elicited from P.W.43 whether PWs.28, 32, 35 and 38 have stated before him as in their Section 161 Cr.P.C., statements or not.

7. As observed earlier, the first petitioner is a party to list of document Nos.27, 29, 75 and 61. It appears that by oversight the prosecution has not marked these documents through PW.43. If these documents are not marked through PW.43, the same may cause prejudice to the prosecution. Even if these documents are marked through PW.43, no prejudice will be caused to the petitioners. The Court has to take into consideration whether the proposed documents if marked would cause any prejudice to the petitioners or not. In the instant case, no prejudice would be caused to the petitioners if the proposed documents are marked through PW.43.

8. Having regard to the facts and circumstances, I am of the considered view that no prejudice will be caused to the petitioners even if the petition is allowed. The trial Court has considered various aspects and allowed the petition. There is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court. Hence, there are no grounds much less valid grounds to allow the petition.

9. Accordingly, the Criminal Petition is dismissed. However, the prosecution is hereby directed to examine PW.43 with regard to the documents referred supra only.

10. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 09.11.2016
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