

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.8356 of 2009

ORDER:

This criminal petition is filed under Section 482 of Cr.PC to quash the order dated 25.9.2009 in CrI.M.P.No.2045 of 2009 in C.C.No.160 2002 on the file of the court of Special Judge for Economic Offences, Hyderabad.

2. The petitioners are the respondents-A1 and A2 whereas the respondent is the petitioner-complainant in CrI.M.P.No.2045 of 2009. For the sake of convenience, the parties are hereinafter referred to as they are referred before the trial court.

3. The petitioner filed the petition under Section 91 Cr.P.C. to call for original documents viz.,

(a) Panchanama dated 09.1.1998 drawn by the Officers of Customs at the O/o.M/s.Kitty Steel Ltd., Hyderabad and documents are seized there under;

(b) Statements dated 22.9.1997, 24.9.1997, 26.9.1997, 30.9.1997 and 09.12.1997 given by Sri V.P. Anand, before the Customs Officers;

(c) Panchanama dated 14.2.1997, 26.3.1997, 17.12.1997, 07.2.1998 and 08.2.1998 drawn by the Customs Officers at ICD, Sanathnagar;

(d) Panchanama dated 13.2.1997 drawn by the Customs Officers at the residence of D.Santhanam and the seized files with pages 1 to 96, 1 to 31 and 1 to 21;

(e) Panchanama dated 13.2.1997 drawn by the Customs Officers at the O/o.M/s.Kitty Steel Ltd.,

(f) Statements of S.M.Bhola dated 25.2.1997 and 26.3.1997 given before the Customs Officers at Hyderabad;

(g) Statements dated 05.3.1997, 06.3.1997, 01.4.1997, 25.4.1997, 28.7.1997, 16.12.1997, 17.12.1997, 18.12.1997, 21.12.1997, 22.12.1997, 22.12.1997, 10.12.1998 and 12.2.1998 of Sri H.S.Sethi given before the Customs Officers;

(h) Statements dated 06.10.1997, 08.10.1997, 13.10.1997, 01.12.1997, 02.12.1997, 10.12.1997 and 23.12.1997 of Sri

D.Santhanam given before the Customs Officers; and

(i) Statements dated 28.2.1997 and 03.3.1997 of Sri C.M.N.Choudhary given before the Customs Officers.

The respondents filed counter stating that the petition is not maintainable under law. After affording reasonable opportunity to both the parties, the trial court arrived at a conclusion that the documents are necessary for conducting trial and, accordingly, allowed the petition. Feeling aggrieved by the order of the trial court, the respondents filed the present criminal petition.

4. The contention of the learned counsel for the respondents (petitioners herein) is two fold:

(1) the trial court allowed the petition without considering the relevancy of the documents; and

(2) if the order passed by the trial court is allowed to stand, certainly it would amount to miscarriage of justice.

Per contra, learned counsel for the petitioner (respondent herein) submitted that there is no illegality or irregularity in the order of the trial court which warrants interference of this court. He further submitted that the petition is filed under Section 91 Cr.P.C. to call for the original documents from the Department of Customs, Central Excise and Service Tax, Hyderabad (hereafter referred to as, the Customs Department); therefore, the objection of the respondent is not legally sustainable.

5. Now the point that arises for consideration in this criminal petition is: *If the order passed by the trial court is allowed to stand, would it cause prejudice to the rights of the respondents and it amounts to miscarriage of justice?*

6. It is an admitted fact that the respondents are facing trial for the offences under Sections 8(3) and 8(4) of the Foreign Exchange Regulation Act, 1973, punishable under Section 56 of the Foreign Exchange Regulation Act, 1973 read with Sections 49(3) and 49(4) of

the Foreign Exchange Management Act, 1999 in C.C. No.159 of 2002. A perusal of the record reveals that basing on the copies of the documents received from the Customs Department, the petitioner i.e., the Enforcement Directorate, Hyderabad conducted investigation and filed complaint against the petitioners. At the time of filing the complaint, the petitioner filed photocopies of the documents, which were received by them from the Customs Department, before the trial court. The fact remains that the original documents are with the Customs Department. When the matter is coming up for trial, since the attempts made by the petitioner to get the original documents from the Customs Department proved futile, the petitioner filed the petition under Section 91 Cr.P.C. before the trial Court.

7. It is a known fact that the trial court may insist the parties to the proceedings for production of original documents for the purpose of marking during the course of trial. The entire case of the petitioner is based on the photocopies of the documents produced before the trial court at the time of filing the complaint. The petitioner is not intending to call for the original documents for the first time by keeping the respondents in dark for all these days. The contents of the documents called for are very much known to the respondents from day-one of filing of the complaint. Had it been the case of the respondents that the documents in question are being produced for the first time, there may be some justification to say that production of the documents may cause prejudice to the respondents.

8. It is a settled principle of law that any order passed by the court shall not cause prejudice to either of the parties to the proceedings more particularly to the accused. In the instant case, the investigation was conducted by the petitioner whereas the original documents are with the Customs Department. If the original documents are not called for, it may not be possible for the petitioner to mark the documents during the course of trial. In order to prove the case, the petitioner has

to mark the original documents available with the Customs Department. If the petition is not allowed, certainly it would cause prejudice to the rights of the petitioner. There is no doubt that the court has to strike balance between the prosecution and the defence. The trial court has passed the order in such a manner not to cause prejudice to any one of the parties to the proceedings. In the circumstances of the case, it is needless to say that the petitioner may not establish its case without calling for the documents in question.

9. To substantiate the contention, learned counsel for the respondents (petitioners herein) has drawn my attention to **Surya**

Narayanan v M.V.Vijayan^[1]. Relevant para-7 reads as under:

“7. It is true that when a document is sought for from the custody of some one, the Court cannot mechanically order for production at the very request of either side without considering the relevancy of the document because a third party cannot be so easily compelled to part with his documents which may cause hardship to him. The respondent complainant has not mentioned the relevancy of the document mentioned in his list for this case and the learned Magistrate also has not ascertained the purpose or relevancy of the documents for the offences alleged against the petitioners. It appears that the learned Magistrate thinking that it is the absolute right of the complainant to summon the documents, has mechanically ordered for the production of the documents.”

In the case cited supra, the prosecution filed the petition under Section 91 Cr.P.C., to call for the documents from the custody of the accused as well as the third parties and that the complainant has not mentioned the relevancy of the document sought for. In the case on hand, the petition is not filed to call for the records from the custody of the respondents. But, the petition is filed to call for the original records from the Customs Department at whose instance and on receipt of the copies of documents from them; the petitioner investigated into the matter and filed the complaint. Filing of the photocopies of documents, the originals of which are now being called for, at the time of the complaint itself indicates their relevancy. Except to that extent, this

court is not inclined to make any observation on the admissibility or otherwise of the documents in question, as it may cause prejudice to one of the parties to the proceedings. In that view of the matter, the decision relied upon by the learned counsel for the respondents is of no avail to the respondents.

10. Having regard to the facts and circumstances of the case, I am of the considered view that there is no illegality or irregularity in the order passed by the trial warranting interference of this court.

11. Accordingly, the criminal petition is dismissed. Miscellaneous petitions, if any pending in this criminal petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 12.04.2016.

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^[1] 1995(2) ALT (CrI.) 132 (Mad.)