

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2017

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR.J

Crl.O.P.No.3503 of 2017

and

Crl.MP.Nos.2531 and 3982 of 2017

R.S.Chatwal

... Petitioner

Vs

State by Inspector of Police,
CBI/SPE/BS & FC,
Chennai.

... Respondent

Petition filed under Section 482 of the Criminal Procedure Code, to call for the entire records relating to criminal case CC.No.2 of 2003 on the file of the learned XI Additional Sessions Judge, CBI Court, Chennai and quash the same.

For Petitioner : Mr.J.Thilagaraj

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

O R D E R

This petitioner has filed an application to quash the charges framed as against him.

2. According to the petitioner, originally the prosecution has laid the charge sheet against A1 to A5 for the various offences u/s.120(b) r/w. 409, 420, 467, 468, of IPC and under sections 13(i)(d) of Prevention of Corruption Act and necessary charges were framed against these accused. During trial, based on materials come up on record by way of evidence, an application u/s.319 of Cr.P.C has been filed and this petitioner has been impleaded as an accused. The petitioner had already challenged the same by way of revision before this court in Crl.RC.No.693 of 2015 and this Court, by its order dated 10.04.2014 confirmed the order of trial court impleading the petitioner and dismissed the revision.

3. Now the present petition has been filed by the petitioner on the ground that initially there was no complaint against the petitioner. According to the petitioner, there are no materials as against the petitioner for prosecuting the petitioner and hence, the petitioner cannot be prosecuted. It is the further contention of the counsel, that there is an enormous delay in impleading him as an accused. Hence, it is the contention of the the petitioner that there is no sanction under section 197 of Cr.P.C, since the alleged act of the petitioner is in connection with the discharge of his official duty. Hence, prayed for quashing the charge as against the petitioner.

4. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor for CBI Cases, for the respondent.

5. The learned counsel for the petitioner vehemently contended that as there is want of sanction to prosecute the petitioner and it is the contention of the counsel that the petitioner is a Zonal Manager and he is also a public servant and therefore, sanction is absolutely necessary. In support of his arguments, he also relied upon the judgments of the Honourable Apex Court reported in

1. 1990 (4) Supreme Court Cases - Ashoka Marketing Ltd. and another Vs. Punjab National Bank

2. 1996 (1) Supreme Court Cases 478 - R.Balakrishna Pillai Vs. State of Kerala and another

3. 1998 (5) Supreme Court Cases 91 - Mohd. Hadi Raja Vs. State of Bihar and another

4. 2003 (2) Supreme Court Cases 721 - Bank of India and others Vs. O.P.Swarnakar and others

5. 2009 (15) Supreme Court Cases 643 - Mir Nagvi Askari Vs. Central Bureau of Investigation

6. After framing the charges, the learned trial court has impleaded the petitioner as an accused on the basis of the evidence of the witnesses examined during the trial. The trial court has satisfied itself about the cheating and connivance of the petitioner with other accused and included him as an accused. When there is a prima facie materials available on record to proceed as against the petitioner for alleged misappropriation and fraud, that itself is sufficient to proceed further as against the accused. The probative value of the evidence and documents relied upon by the prosecution cannot be gone into at this stage. Admittedly, the allegation of cheating and other allegations levelled as against the petitioner and such allegations cannot be stated that they are connected with the discharge of his official duties. Therefore, this Court is of the view that sanction under section 197 Cr.P.C. is not

required to the court, if the accused has been impleaded on basis of the evidence of witnesses. This view has been clearly upheld in the judgment of the Hon'ble Supreme Court reported in AIR 1960 SC 266 - K.Satwant Singh Vs. state of Punjab wherein it has been held as follows :

"It appears to us to be clear that some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of a bribe, an offence punishable under Section 161 IPC, is one of them and the offence of cheating or abetment thereof is another ---- where public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences.... The act of cheating or abetment thereof has no reasonable connection with the discharge of official duty. The act must bear such relation to the duty that the public servant could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

Having regard to the above settled position of law and the nature of allegations levelled against the petitioner in the form of cheating and abetting, this petition cannot be entertained and is liable to be dismissed.

7. Accordingly, this Criminal Original Petition is dismissed. However, the petitioner is at liberty to raise all the above aspects during trial. Consequently, the connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS VIII)

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Sub Assistant Registrar

vrc

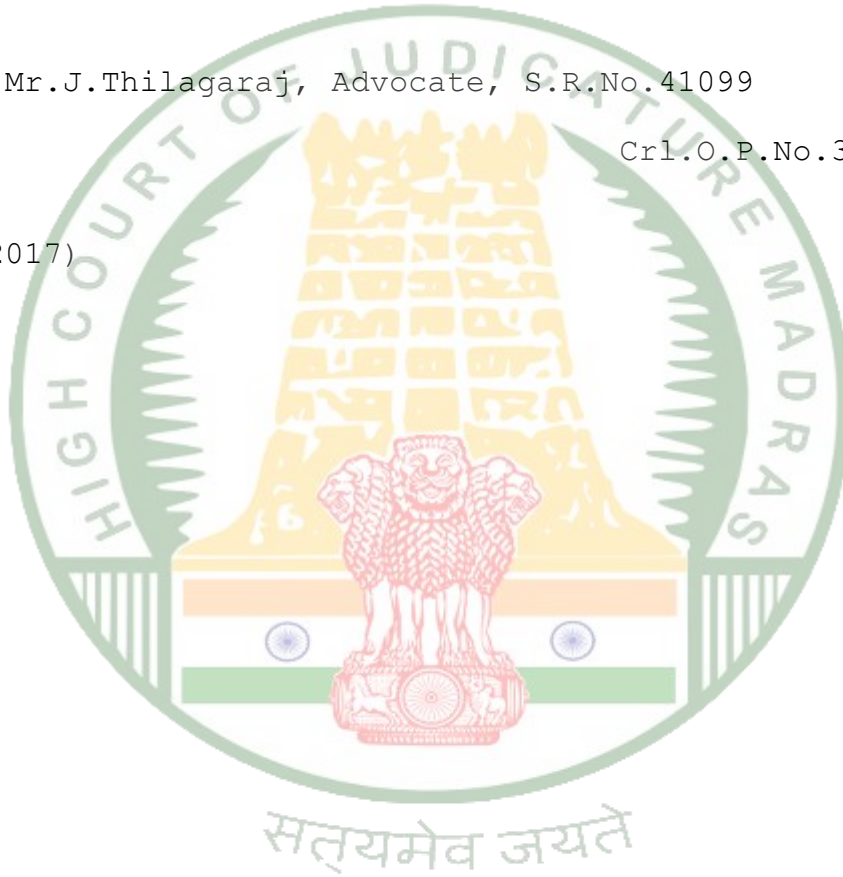
To

1. The XI Additional Sessions Judge,
CBI Court, Chennai
2. The Inspector of Police,
CBI/SPE/BS & FC,
Chennai.
3. The Public Prosecutor,
High Court, Chennai 104.

+2cc's to Mr.J.Thilagaraj, Advocate, S.R.No.41099

CrI.O.P.No.3503 of 2017

GP(CO)
CA(27/06/2017)



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