

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.NoS.6699 & 6700 of 2017

Crl.M.P.Nos.4898 & 4899 of 2017

Shaalini ... Petitioner in Crl.O.P.No.6699 of 2017(A3)

M.R.Sarangapani ... Petitioner in Crl.O.P.No.6700 of 2017(A2)

Vs

State Represented by
The Inspector of Police,
CBI/BS & FC,
Bangalore.

(R.C.No.2(E) of 2007)
Crl.O.Ps.

... Respondent in both

Criminal Original Petitions filed under Section 482 Cr.P.C to set aside the order dated 06.03.2017 passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai made in Crl.M.P.Nos.3001 and 3000 of 2016 in C.C.No.15007 of 2008 and thereby allow the same and recall the witnesses P.W.1 (S.R.Karunakaran), P.W.9 (A.S.Krishnamoorthy), P.W.16 (G.S.Krishnan), P.W.17 (George Joseph), P.W.25 (R.Sundar), P.W.26 (J.C.Anand), P.W.29 (K.Mani), P.W.35 (S.Beharilal), P.W.37 (P.Rajasekaran), P.W.38 (T.N.Rajan), P.W.43 (V.Sundar), P.W.45 (S.Karthikeyan), P.W.48 (S.Chitra), P.W.49 (S.Selvaraj), P.W.50 (M.Thiyagarajan), P.W.51 (K.B.Jayaprakash, P.W.52 (B.N.Raamesh) and P.W.53 (Thomas John).

For Petitioners: Mr.S.R.Raghunathan
in Crl.O.P.No.6699 of 2017

Mr.R.Karthikeyan
in Crl.O.P.No.6700 of 2017

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

C O M M O N O R D E R

These petitions have been filed as against the dismissal of the petitions filed by the petitioners to recall 18 witnesses out of 53 witnesses examined on the side of the prosecution.

2. It is the main contention of the learned counsel for the petitioners in both the petitions that the previous counsel, who appeared for the petitioners, has not cross examined the material witnesses, who had spoken against the petitioners. Hence, it is the contention of the learned counsel for the petitioners that an opportunity may be given to the petitioners to cross examine the witnesses to establish their defence in the criminal case.

3. The learned Special Public Prosecutor for CBI cases appearing for the respondent has submitted that this case is pending from the year 2008 and when the witnesses were produced from various parts of the country for examination, they have not been cross examined on the side of the petitioners and after examination of all the witnesses, these petitions have been filed to recall the witnesses. He further submitted that the prosecution can produce the witnesses within two months on payment of cost by the accused.

4. Heard both sides and perused all the materials available on records. This case is of the year 2008. When the witnesses were produced by the prosecution from various states, the learned counsel for the petitioners have not chosen to cross examine the witnesses, without any reasons, whatsoever. Though fair trial is guaranteed under the Constitution, the same cannot be taken as an advantage to delay and protract the proceedings, as the fair trial includes speedy disposal of the case. The materials on record clearly exhibit the callous attitude on the part of the counsel for the petitioners in not cross examining the witnesses. Such conduct of the learned counsel who have been engaged by the accused to defend their case, is highly deprecated. Therefore, this Court is of the view that the negligence on the part of the counsel for the petitioners, cannot be a ground to deny fair trial to the accused.

5. It is well settled law that recall of the witnesses is not a matter of right at the whims and fancies of the accused. At the same time, the Court has to safe guard the concept of fair trial and the right of the accused. Taking into consideration of all these facts and in view of no objection on the side of the prosecution and as the prosecution is ready to produce all the 18 witnesses, now sought to be recalled, in a time bound manner, this Court is inclined to allow these petitions for recalling 18 witnesses, who are sought to be recalled for the purpose of cross examination.

6. Accordingly, the prosecution shall produce the said

witnesses within a period of one and half months from today and the cross examination of the witnesses shall be completed on the same day and the cross examination of all the witnesses has to be completed on or before 20.07.2017. The petitioners shall pay the travel expenses and other charges to the witnesses, who are recalled. It is the duty of the prosecutor to give the list of expenditure of each witnesses, who have to be recalled, to other side. Initially, the petitioners shall deposit a sum of Rs.40,000/- towards the expenses of the witnesses within a week from today. It is made clear that when the witnesses are produced within the time frame set out by this Court as above, if the witnesses are not cross examined on the same day, the petitioners will lose their right of cross examination. After examination of the witnesses within the said time frame, the trial Court is directed to dispose of the main case within a period of three months.

7. With the above observations, these petitions are disposed of. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Inspector of Police,
CBI/BS & FC,
Bangalore.
2. The Additional Chief Metropolitan Magistrate,
Egmore,
Chennai.
3. The Special Public Prosecutor,
CBI Cases, High Court, Madras-104.

+2cc to Mr.R.Karthikeyan,Advocate sr.9809&9808(6/6/2017)

Cr1.O.P.NoS.6699 & 6700 of 2017

SV(CO)
RS(06/06/2017)