

In the High Court of Judicature at Madras

Dated : 25.10.2017

Coram :

The Honourable Mr.Justice G.JAYACHANDRAN

Criminal Original Petition Nos.22542 & 22543 of 2017
& Crl.M.P.Nos.13182 & 13183 of 2017

1.M/s.L & T, rep.by
G.N.Ramanuja Rao

2.P.L.N.Murthy
3.G.N.Ramanuja Rao
4.Aravind Guha
5.A.Venkat Prakash Rao
6.N.Hariharan
7.Rabindanath Chakraborty
8.V.K.Murthy

all at L & T Contract Division,
Ramavaram, Chennai.

...Petitioners
in
both the Crl.O.Ps.

Vs

The State rep. By the Inspector of
Police, E.O.W., CBI, Chennai.

...Respondent
in

Crl.O.P.No.22542/
2017

The State rep. By the D.S.P.,
E.O.W., CBI, Chennai.

...Respondent in
Crl.O.P.No.22543/
2017

PETITIONS under Section 482 of the Criminal Procedure Code seeking to allow the above criminal original petitions and set aside the orders of the learned 14th Additional Judge for CBI Cases, Chennai in Crl.M.P.Nos.3235 and 3556 of 2017 in C.C.No.70 of 2004 respectively dated 04.8.2017 and 08.8.2017 dismissing the same.

For Petitioners : Mr.R.Srinivas
For Respondents : Mr.K.Srinivasan, Spl.P.P.
for CBI Cases

COMMON ORDER

These petitions arise out of dismissal of two petitions filed by the accused persons to reopen and recall D.W.1 to mark certain documents pertaining to service details.

2. I have heard the learned counsel on either side.

3. The case of the prosecution is that a fake insurance claim was made by the first accused - company, thereby cheating a public institution. To disprove the said fact, the defence took out an application to examine D.W.1, which was allowed by the Trial Court and in the course of examination of D.W.1, nearly 10 documents were marked. Thereafter, after closing of recording of evidence, the Trial Court proceeded to hear the argument of the prosecution. At that point of time, the present applications, in which the impugned orders are passed, were filed by the accused persons to recall D.W.1 in order to prove that D.W.1 was the Accountant of Simhadiri Site in the first accused company during the relevant point of time and that the initials found in Ex.D.12 to Ex.D.16 are under authorization made by D.W.1.

4. The Trial Court found that while summoning D.W.1, the documents, which are supposed to be relied upon by the defence, should have been listed and given to the prosecution and enough care would have been taken while examining D.W.1 and that instead of disclosing the list of documents to be relied upon at the first instance, after completion of the arguments on the side of the prosecution, the present applications were filed to reopen the evidence and recall D.W.1 belatedly to drag the proceedings. The learned Trial Judge recorded that it is a case of the year 2004 and after examining the witnesses on either side and when the arguments are underway, the present applications were filed alleging that due to oversight, the documents have been omitted to be marked to elucidate from the witness with regard to the initials made him in Ex.D.12 to Ex.D.16 as an authorized person. On the said ground, the present applications came to be dismissed by the learned Trial Judge. Aggrieved by those orders, the above criminal original petitions are filed.

5. On perusal of the petitions and the impugned orders, it is clear that the defence, while examining D.W.1, ought to have marked the documents and should have confronted him with the specific portion of the document, in which, he admitted to have made his initials. However, as conceded by the learned counsel for the petitioners, due to oversight, this omission has occurred. Considering the submissions and the alleged omission, which appears to be very crucial for the defence, foreclosing the right of the accused, on the ground of delay, may not be

appropriate to meet the ends of justice.

6. Accordingly, the impugned orders are set aside and the above criminal original petitions are allowed on condition that the petitioners shall ensure the presence of D.W.1 on 10.11.2017 before the Trial Court. The Trial Court, on that date, shall examine the witness and proceed further. In case the defence fails to secure the presence of D.W.1 on that date, it is made clear that no further opportunity will be granted and that the Trial Court is at liberty to proceed further. Consequently, the above Crl.M.Ps. are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
E.O.W., CBI, Chennai.

2.The Deputy Superintendent of Police,
E.O.W., CBI, Chennai.

+2cc to M/S.R.Srinivas, Advocate Sr. 75806 (Dt.06/11/2017)

Crl.O.P.Nos.22542 & 22543/2017 &
Crl.M.P.Nos.13182 & 13183/2017

AR (IV)
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