

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Original Petition No. 26662 of 2017
& Crl M.P. No. 15349 of 2017

K. Sridhar

... Petitioner

Versus

State: represented by
Inspector of Police,
CBI/ACB/Chennai,
RC MA1/2001/A/0044,
Chennai.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set-aside the order of the Learned II Additional District Judge for CBI Cases, Coimbatore dated 02.11.2017 dismissing the petition in Crl. M.P.No. 2645 of 2017 filed under Section 243 of the Code of Criminal Procedure in C.C.No. 02 of 2003.

For Petitioner : Mr. R.John Sathyan

For Respondent : Mr. K.Srinivasan
Special Public Prosecutor

ORDER

The petitioner herein who is the first accused in C.C.No. 2 of 2003, pending on the file of 2nd Additional Sessions Court, (CBI cases Coimbatore), is aggrieved by the dismissal of the petition filed under Section 243 Cr.P.C filed for summoning the witness for defence.

2. According to the petitioner, he has been charged along with other accused for criminal conspiracy to cheat Central Bank of India, Ooty Branch. In pursuance of criminal conspiracy, he along with the others accused created fake and fabricated documents as genuine and in the process, caused disappearance of the document and thereby caused loss to Central Bank to tune of Rs.1 crores and corresponding wrongful gain to themselves. The Special Court of CBI has framed charge against this petitioner for offences under Section 120 B r/w 420, 201, 482, 471 I.P.C and

Section 13 (ii) (i) (d) of Prevention of Corruption Act.

3. On 01.07.2017, after closing of evidence on either side, the case was posted for arguments and while preparing the written argument, the defence counsel found that the author of the inspection report 24.05.2001 has to be examined to disprove the case of the prosecution and therefore he has taken out application under Section 243 Cr.P.C to summon Ramachandra Raju, the author of the inspection report dated 24.05.2001 and one Lourdes Anathan, Inspector of Police who has conducted the house search of the petitioner. The trial court, after considering the petition and the counter, has dismissed the petition. Aggrieved by that, the present petition is filed.

4. Heard the learned counsel for the petitioner and perused the impugned order and the grounds raised in the petition. Insofar as report said to have been submitted by Ramachandra Raju, the petitioner admit that the report was given to him as early as 24.05.2001, immediately after Ramachandra Raju inspected Central Bank, Ooty Branch, in which the petitioner was Branch Manager at that point of time. Further, from the records and the pleadings, it is seen that the said report has already been marked as Court exhibit through the Head Clerk of the Court. The prosecution has completed the examination of its witnesses as early as 02.06.2017 and incriminating material against the petitioner had been put to him under Section 313 (i) (b) Cr.P.C on 23.06.2017 and thereafter, for examining the defence witnesses, the case had been adjourned and the examination of defence side witnesses was also completed on 01.07.2017 and for arguments, the trial court has adjourned the case for 12 hearings. At that juncture, petition under Section 243 Cr.P.C has been filed.

5. The trial court has held that the report of Ramachandra Raju has already been admitted as document and contents of the document can be taken advantage by the petitioner and it is not necessary for the author to be summoned and likewise, one of the witness in respect of house search of the petitioner, had already been examined by the prosecution and Inspector of Police Sri. Lourdes Anandhan was not even cited in the list of witnesses filed in the final report and therefore, summoning him to give evidence regarding the house search is superfluous and unnecessary.

6. Therefore, the Trial Court has dismissed the petition on the ground that the petition has been filed to protract the proceedings and defeat justice. This Court finds no error in the

order of the Trial Court. As far as, right to the accused persons to let in defence witness is concerned, it is clearly stated under Section 243 of Cr.P.C., which reads as follows:-

Evidence for defence

(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may before summoning any witness on an application under Sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

This provision is subject to Section 22 (a) of Prevention of Corruption Act.

Section 22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications.-

(a) in sub-section (1) of section 243, for the words "The accused shall then be called upon", the words "The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon" had been substituted;

7. On Combined reading of these two provisions, it is very clear that in case of trial under the Prevention of Corruption Act, after completion of Section 313 Cr.P.C proceedings, the accused shall be given right to give evidence for defence if the list of person whom he propose to examine as witness and the documents he proposed to rely, immediately or within such time the trial court allows.

8. In this case, after Section 313 Cr.P.C questioning, the accused has exhausted the right under Section 243 Cr.P.C r/w under Section 22 of the Prevention of Corruption Act and after 12 adjournments, the petitioner has thought it fit to file an application to summon Ramachandra Raju who is author of the inspection report dated 24.05.2001. The knowledge of its contents the petitioner know on the date of report itself, and allowed to be marked when it was admitted into evidence in the Court through Head Clerk (CBI Court). Likewise, the prosecution has examined the witnesses for the house search. The Inspector of Police who was present during the house search is Lourdes Anandhan and his name does not figure in the list of witnesses. While so, if the petitioner had thought it fit that he is necessarily to be examined, he should have done it at the earliest. The occurrence of the case was in the year 2003, when the matter being posted for arguments and the petitioner has taken 12 adjournments to put forth his arguments, this Court cannot find fault with the Trial Court's observation that petition was filed belatedly under Section 243 of Criminal Procedure Code by the accused persons with an intention to protract the proceedings.

9. In the result, the Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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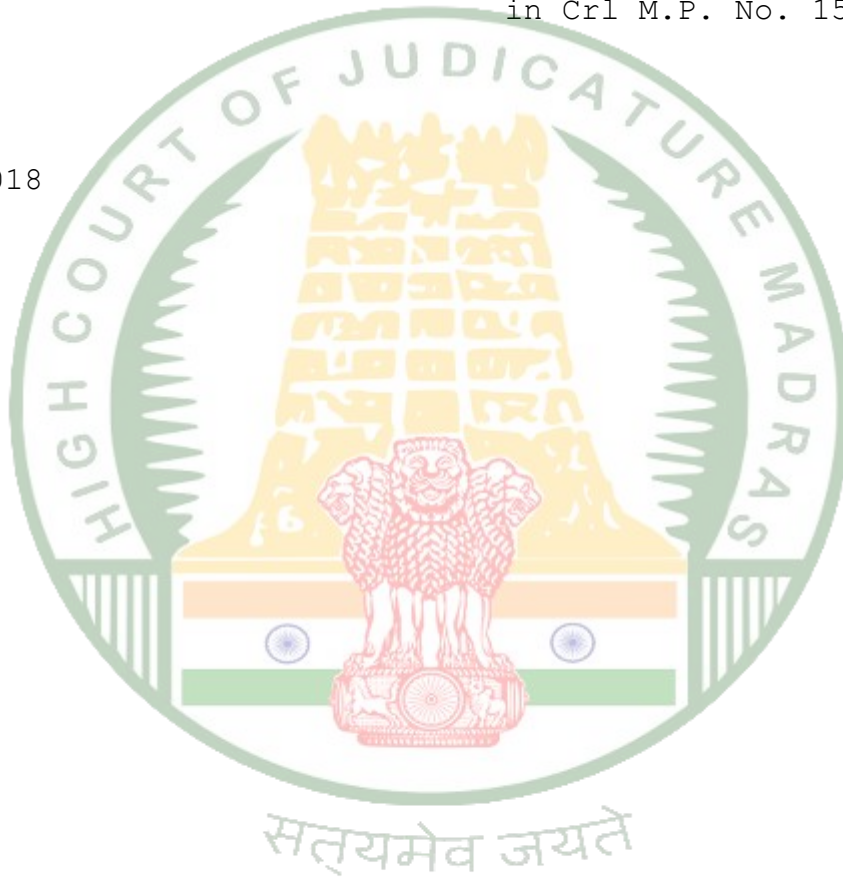
To

1.The Inspector of Police,
CBI/ACB/Chennai,
RC MA1/2001/A/0044,
Chennai.

2.The Special Public Prosecutor
High Court, Madras

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