

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.12.2017

Pronounced on : 18.12.2017

Coram

The Honourable Dr.Justice G.Jayachandran

Crl.O.P.No.26726 of 2017

Thota T.Sivakumar

.. Petitioner

/versus/

The State,
represented by
The Inspector of Police,
CBI, ACB, Chennai.

.. Respondent

Criminal Original Petition is filed under Section 482 of the code of Criminal Procedure praying to set aside the order dated 28.11.2017 made in Crl.M.P.No.5353 of 2017 in C.C.No.11 of 2014 on the file of the Principal Special Judge for CBI Cases/VIII Additional Judge, City Civil Court, Chennai and allow Crl.M.P.No.5353 of 2017 in C.C.No.11 of 2014.

For Appellant :Mr.K.Sridhar

For Respondent :Mr.K.Srinivasan,
Spl.PP for CBI Cases

ORDER

This petition is filed to set aside the order dated 28.11.2017 made in Crl.M.P.No.5353 of 2017 in C.C.No.11 of 2014 on the file of the Principal Special Judge for CBI Cases/VIII Additional Judge, City Civil Court, Chennai.

2. Based on the written complaint dated 07.03.2014 lodged by Mr.L.G.Ravi, First Information Report was registered vide Crime No.RCMA12014A0008. During the course of investigation, a trap was laid observing the legal formalities and the petitioner/accused was caught, while demanding and accepting bribe of Rs.15,000/- from the complainant in the presence of the independent witnesses.

3. On completion of investigation, final report has been filed under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The respondent has examined 11 witnesses and his counsel has cross examined them.

4. At this juncture, the petitioner has filed Crl.M.P.No.5352 of 2017 to issue subpoena to the Editor of Thanthi TV, Metro Nation Chennai Television Pvt.Ltd., RMZ Mellenia 1C, 1st Floor, No.143, Dr.MGR Road,

Kandanchavadi, Perungudi Chennai, contact No.044-42907777/789/729 to produce the video footage of the interview/news report taken by them on 07.03.2014 at the office of the SSE, Permanent Way, Southern Railway Moore Market Complex, Chennai. The trial Court, after considering the petition and counter has dismissed the said petition. Aggrieved by the said dismissal order the present petition is filed.

5. According to the petitioner, there are vital discrepancies in the evidence of the prosecution witnesses regarding the alleged incident. The defacto complainant [L.G.Ravi] had given an interview to "Dhina Thanthi" news channel on 07.03.2014 at around 05.00 p.m., The said interview clippings are very vital to throw much light on the above incident. The statements made by the defacto complainant to the Television channel is different from the allegations made by him in the above case. Further, he was never present, when the alleged incident of recovery which said to have taken place. Hence, the above said petition filed to issue subpoena to the editor of Dhina Thanthi news channel to produce the video footage of the interview taken by them on 07.03.2014 has to be allowed and the trial Court order rejecting his plea has to be set aside.

6. The trial Court in the impugned order has rightly pointed out that the petition is bereft of details such as when the defacto complainant's interview was telecasted. Further, when the defacto complainant was examined on oath before the Court and subjected to the cross examination, nothing was elucidated through him about the alleged interview given by the witness.

7. Though the trial Court has gone further and held that the TV interview is only hearsay evidence, which is incorrect legal proposition. Except that observation, this Court finds that there is no error in the impugned order of the trial Court. The alleged TV interview of the defacto complainant is not the "fact in issue" or "relevant fact" for the Court to consider. Under Section 145 of the Indian Evidence Act, 1872, what the witness said during the investigation and reduced into writing as statement, alone has to be taken for contradiction of the witness. That too before the said writing can be proved, the attention of the witness must be called to those parts of it which are to be used for the purpose of contradicting him.

8. In this case, as pointed out the petitioner has not done the said exercise while examining the defacto complainant while he was in the

witness box. Therefore, this petition is liable to be dismissed. Accordingly, this criminal original Petition is dismissed.

18.12.2017

Index:yes/no

To

1.The Inspector of Police, CBI, ACB, Chennai.

2.The Special Public Prosecutor for CBI Cases, High Court, Madras.



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Dr.G.Jayachandran,J.

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