

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.26728 of 2017

Thota T.Sivakumar

.. Petitioner

/versus/

The State Rep.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.5355 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.5355 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 case has been filed seeking to set aside the order dated 28.11.2017 made in CrI.M.P.No.5355 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 Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against the petitioner/accused. The respondent has examined 11 witnesses and his counsel has also cross examined them.

4. At this juncture, the petitioner has filed CrI.M.P.No.5355 of 2017 to issue subpoena to the Inspector of Police, CBI/ACB, Shastri Bhavan, Chennai to produce the visitors entry register of their office for

the period from 01.03.2014 to 15.03.2014. 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 time, when the defacto complainant L.G.Ravi came to the office of the CBI and the alleged time of arrival of the independent witnesses. A false case has been foisted on the petitioner and the petitioner is being made a scape goat. The above said discrepancies goes to the very root of the case, as there is dispute as to whom the defacto complainant, when he went to lodge the alleged complaint and when the witnesses came to the CBI office.

6. Heard both sides. Petition, counter and the impugned order perused.

7. The accused, who is the petitioner herein suspects that the defacto complainant was accompanied by some body to CBI office and the decoy witnesses did not come to the CBI office as found in the prosecution documents. He contents that if the visitors book is summon, the truth will come to light and it will be establish his innocence. Whereas the

prosecution apprehends that production of visitors book will disclose the details of informants and other sensitive informations, which will cause prejudice to CBI not only this case but all cases under investigation.

8. Whether the visitors book maintained by the CBI office is a relevant document in the present case, has to be considered, in view of the rival contention made by the parties. The case under trial is whether the petitioner herein demanded and received bribe of Rs.15,000/- from the defacto complainant. The visitors book maintained in the CBI office at the most may disclose or not disclose the visit of the defacto complainant and the accompanying witnesses. If it discloses his visit during the relevant point of time, the entrustment mahazar alleged to have been prepared at the CBI office will be believable, if not, it may become unbelievable. Whether the entrustment mahazar is believable or not, is not the root of the case but whether the petitioner demanded and received bribe and the genuineness of the recovery mahazar is the fact in issue for determination. While sticking balance between the right of the accused and the protection of informants, the production of visitor book at the most may help the accused/petitioner to impeach the credibility of entrustment mahazar, but nothing more. Whereas the production of the visitor book will cause grave prejudice to CBI, since it may contain several particulars including the

details of the informants and about on going investigation, which may endanger the informer and also undermine the investigation. Therefore, the order of the trial Court need no interference.

9. However, it is always open to the trial Judge, if in his wisdom think any document should be summoned for his perusal (Emphasis added), it is always at liberty to do so. In this regard, it is to be mentioned, if the trial Court wants to peruse any document, that the following guidelines given by the Hon'ble Supreme Court **reported in 2017 SCC OnLine SC 1430 Nitya Dharmananda @ K.Lenin & Another -vs- Sri Gopal Sheelum Reddy also known as Nithya Bhaktananda and Another** shall be scrupulously followed.

"9. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of charge but if the Court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the Court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It does not mean that the

*defence has a right to invoke Section 91 Cr.P.C
de hors the satisfaction of the Court, at the
stage of charge."*

Hence, this Criminal Original Petition is disposed of. No costs.

18.12.2017

Index:yes

Internet:yes/no

Speaking order/non speaking order
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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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