

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.11.2016

PRONOUNCED ON : 08.02.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.OP.No.24978 of 2016

B.Balasubramanian

...Petitioner

Vs.

The State
rep by the Inspector of Police
CBI/ACB/Chennai
Sastri Bhavan,
Chennai -6.

...Respondents

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code, to set aside the order dated 17.10.2016 made in Crl.MP.No.4781 of 2016 in CC.No.3 of 2005 on the file of the XI Additional City Civil and Sessions Judge of CBI Cases, Chennai.

For Petitioner : Mr.P.Neethikumar

For respondent : Mr.K.Srinivasan, SPP for CBI.

ORDER

This Criminal Original Petition is directed to set aside the order dated 17.10.2016 made in Crl.MP.No.4781 of 2016 in CC.No.3 of 2005 on the file of the XI Additional City Civil and Sessions Judge of CBI Cases, Chennai and to recall the cross examination of the witnesses.

2. The case of the petitioner is that in the above said case, the prosecution has examined 53 witnesses and after completing the evidence the petitioner filed petition to recall 13 witnesses for cross examination. The case involves voluminous documents and since there has been undue delay on the part of the prosecution in completing the chief examination of 53 witnesses by frequently taking adjournments from time to time for production of the said witnesses. The counsel for the petitioner was unable to complete the cross examination of a few of the witnesses examined by the prosecution and therefore the

failure to cross examine the 13 witnesses, cannot be blamed on the petitioner alone and the petitioner should be given opportunity to cross examine the said witnesses within the earliest possible time. The petitioner filed recall application for recalling the witnesses of PWs 2, 3, 5, 6, 7, 18, 19, 27, 31, 44, 47, 48, 51 and 53, on earlier occasion the trial Court dismissed the application filed by the other accused and this Court also confirmed the same. In order to ensure fair trial and prove his innocence, recalling of the witnesses are absolutely necessary, if this petition is not allowed, the petitioner would be greatly prejudiced. If the petition is allowed no prejudice would be caused to the respondent and the principles of natural justice requires that the petitioner to cross examine the witnesses.

3. The learned Special Public Prosecutor would submit that already sufficient opportunity has been given for cross examination and the counsel for the accused adopted the cross examination done by the counsel for the other accused and after nine years, the counsel for the other accused and the petitioner one after another filed petitions only to protract the proceedings, already sufficient opportunity has been given and the witnesses have appeared sufficient time for cross examination. The trial Court rightly dismissed the petition filed by the petitioner and the other accused for recalling of the witness and the learned counsel prays for dismissal of the petition.

4. Heard the rival submissions made on both sides and perused the available records and also the order passed by the trial Court.

5. No doubt, the prosecution has examined 53 witnesses for more than nine years and after completion of examination, the first accused filed Crl.MP.No.1801 of 2016 to recall the evidence of PW1, 3, 4, 7, 25, 27, 39, 40, 44, 45, 53 and 24 for cross examination and the accused 2 and 3 filed Crl.MP.No.1802 of 2016 to recall the evidence of 11, 12, 13, 16, 17, 21, 22, 24, 25, 26, 27, 31, 32, 33, 34, 35, 37, 39, 40, 41, 44, 46, 47, 48, 49, 50, 51, 53. After hearing both sides, the trial Court on 11.05.2016 permitting the petitioner to cross examine PWs.24 and 53 in Crl.MP.No.1801 of 2016 and PWs.24, 51 and 53 in Crl.MP.No.1802 of 2016 and rejected the claim in respect of other witnesses in both the petitions. Against the said order, the accused preferred Crl.OP.Nos.11440 & 11560 of 2016 before this Court, this Court partly allowed the petitions as follows :-

"In view of the above, the criminal original petitions are partly allowed. The petitioner/A1 (petitioner in Crl.OP.11440 of 2016) is permitted to recall PWs.3, 7, 25, 39 & 40 and similarly, the

petitioners/A2 & A3 (petitioners in CrI.OP.11560 of 2016) are permitted to recall PWs.11, 12, 16, 22, 25, 26, 27, 31, 35, 40, 47, 48 & 50, for the purpose of cross examination. The petitioners shall bear the cost for recalling the above said witnesses. The trial Court is directed to fix the date for cross examination and complete the cross examination within a period of six weeks from the date of receipt of a copy of order. The petitioner shall cooperate for the completion of the cross examination of the recalled witnesses."

6. This revision petitioner had filed petition for recalling of 13 witnesses before the trial Court. The trial Court after considering the facts and circumstances of the case, dismissed the petition filed by the petitioner. Already similar applications were filed by the other accused and not by this accused, the witnesses was originally examined, the counsel for the accused should have cross examined those witnesses, but they failed to do so, therefore, in the interest of justice and in order to give fair opportunity to the petitioner for enabling cross examination of the witnesses, this Court is inclined to allow this petition.

7. During the course of arguments, the counsel for the petitioner filed a memo dated 15.11.2016 restricting his claim to 11 witnesses for cross examination viz., PWs.5, 6, 7, 18, 19, 31, 44, 47, 48, 51 and 53. The case involved is corruption and conspiracy and considering the graveness of the offence, the witnesses are aged persons and have appeared several times before the Court.

8. The petitioner is permitted to recall the evidences of PWs.5, 6, 7, 18, 19, 31, 44, 47, 48, 51 and 53 for cross examination. The petitioner is directed to deposit a sum of Rs.25,000/- before the trial Court on or before 15.02.2017. After such deposit, the trial Court is directed to issue summons to the aforesaid witnesses on 16.02.2017 fixing the date, the trial Court is further directed to complete recording of the evidence of the recalled witnesses within four weeks, thereon. The witnesses are to be paid from the deposited amount as per rules. After completion of the evidences, the petitioner is directed to deposit the excess amount if any, payable to the witnesses or the petitioner is permitted to withdraw the balance amount from the deposit.

9. With the above terms, the criminal original petition is allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

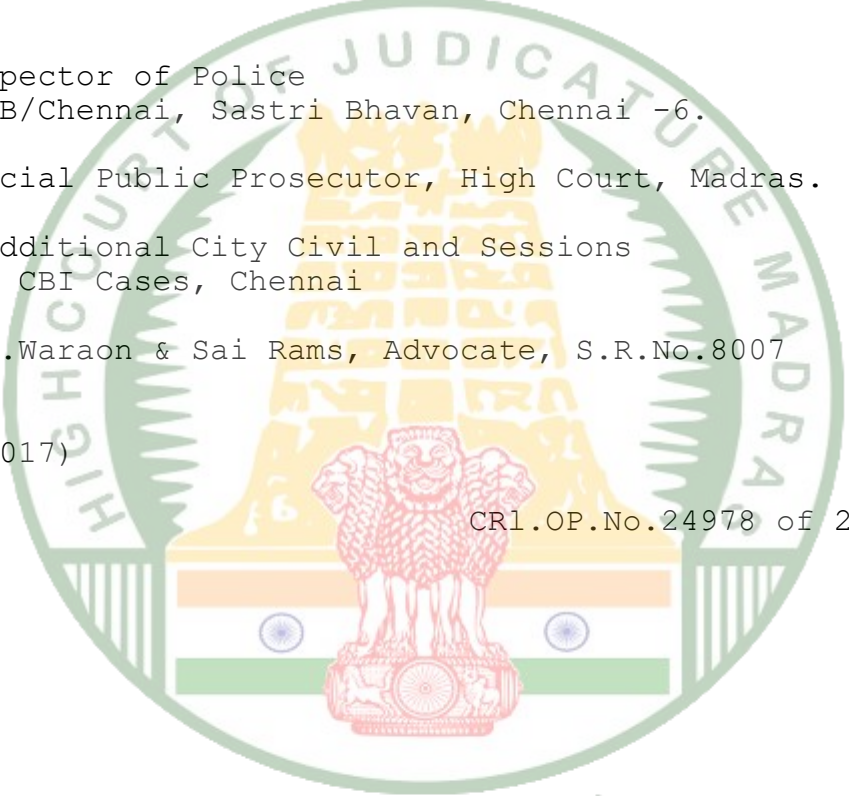
To

1. The Inspector of Police
CBI/ACB/Chennai, Sastri Bhavan, Chennai -6.
2. The Special Public Prosecutor, High Court, Madras.
- 3 The XI Additional City Civil and Sessions
Judge, for CBI Cases, Chennai

+1cc to Mr.Waraon & Sai Rams, Advocate, S.R.No.8007

scd(CO)
md(08/02/2017)

CR1.OP.No.24978 of 2016



सत्यमेव जयते

WEB COPY