

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.03.2018

Pronounced on : 25.06.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.301 of 2018
and
Crl.M.P.Nos.3580 & 4774 of 2018

TTV.Dhinakaran Petitioner

Vs.

Assistant Director,
Enforcement Directorate, Govt. of India,
Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006. Respondent

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., against the order dated 08.12.2017 made in Crl.M.P.No.2755 of 2017 in E.O.C.C.No.27 of 1996 on the file of the learned Additional Chief Metropolitan Magistrate (EO-II), Allikulam, Chennai - 600 003.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.A.Jenasenan

For Respondent : Mr.G.Rajagopalan, ASGI
Assisted by Ms.G.Hema, CGSC

ORDER

The instant revision is preferred by the revision petitioner, who is the accused in the complaint prepared by the Assistant Director, Directorate of Enforcement, Government of India, Ministry of Finance, Chennai, who filed the complaint under Sections 8(1), 9(1)(a) and 14 of the Foreign Exchange Regulation Act, 1973, which is punishable under Section 56(1)(i) before the learned Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai alleging that the revision petitioner acquired foreign exchange without previous general or special

permission from the Reserve Bank of India in the year 1994-1995 from unauthorized dealers of foreign exchange and deposited the money in bank account outside India.

2. In pursuance of the filing of the complaint and after followed due process, charges were framed against the petitioner and earlier on various stages of prosecution the revision petitioner approached this Court and the Hon'ble Supreme Court during the trial. However, some of his pleas were considered and some of his pleas were negatived by the Hon'ble Courts. Now presently, the witness examination is going on the side of the prosecution. When PW-1 was examined, on the side of the accused, by relying on the evidence of PW-1 filed a petition under Section 247 r/w 243(2) of Cr.P.C., for the production of certain documents which are form part of the prosecution case records. Since, the petition filed by the revision petitioner for the production of documents was not considered; he preferred the instant revision case to set-aside the order of the learned trial Court passed in CrI.M.P.No.2755 of 2017 in E.O.C.C.No.27 of 1996 dated 08.12.2017.

3. The learned counsel appearing for the revision petitioner would submit that the documents sought to be furnished are form part of the prosecution records and totally having nexus with the allegations of the prosecution case. In this connection he has relied on the judgments reported in 2012 (2) LW CrI 759 which was followed by this Hon'ble Court and reported in 2015 (2) LW CrI 18. Apart from that he has also submitted that in order to ensure fair trial and to defend the prosecution case effectively, the documents sought for by the revision petitioner are to be furnished not only in the interest of justice but the same would not cause prejudice to the case of the prosecution in any manner. However, according to the learned counsel for the revision petitioner that the learned trial judge has not considered the importance of the pleas raised by the revision petitioner, simply dismissed as the documents are not relied upon by the prosecution. Moreover, the holding of the learned trial judge that the petitioner fails to submit the reason and explanations for the production of the document is unjustifiable for the reason that sufficient cause is shown for the compelling necessity to file the said application. So, by exercising the revision jurisdiction of this Hon'ble Court, the findings of the learned trial judge is liable to be interfered with for the just decision of the case.

4. On the other hand, the learned counsel for the respondent would contend that the revision petitioner/accused has filed petitions one after another not for any legal cause, but with an intention to drag on the proceedings and also to escape from the clutches of law. He adds further that though the discharge petition filed by the revision petitioner/accused was allowed by

the learned trial Court earlier, but the same was negatived by this Hon'ble Court in the order passed in Crl.R.C.No.937 of 2015 dated 01.02.2017. Several other petitions were also filed which were disposed of by this Hon'ble Court with a specific direction, especially in Crl.O.P.No.12983 of 2017 dated 24.07.2017, the learned trial Court was directed to conclude the main proceedings within a period of 3 months from the date of receipt of the order passed in the aforesaid Crl.O.P. Knowing the fact well, the filing of the present petition before the learned trial Court under Section 247 r/w 243(2) of Cr.P.C., is nothing but vexatious, so, the revision case is liable to be dismissed.

5.I heard Mr.B.Kumar, learned Senior Counsel for M/s.A.Jenasenan, learned counsel appearing for the petitioner and Mr.G.Rajagopal, Assistant Solicitor General of India for Ms.G.Hema, Central Government Standing Counsel for the respondent and the materials available on record are perused.

6.The case of the revision petitioner is that the documents sought for are form part of the prosecution records. So, he is entitled to get the copies of those documents and the non-production of those documents would affect his effective defence and the same would cause partiality in the fair trial. On the other hand, the strong objection on the side of the respondent/complainant is that the oblique intention of the revision petitioner in filing successive irrelevant petitions is to be seriously viewed in the interest of justice and none of the documents sought for are relied on by the prosecution. So, it is not necessary for the prosecution to furnish those documents to the revision petitioner.

7.The learned trial judge while considering the merits of the petition has analyzed the relevancy of each documents and finally concluded those documents are not relevant for the just decision of the instant case. However, the perusal of the order passed by the learned trial judge would disclose that the 1st document is the file pertaining to this case which consisted of distinct number with note sheet and orders on the other-side. According to the learned trial judge, this file is to be construed as case diary and treating the said file as case diary, the learned trial judge further proceeded with by placed reliance under Section 172(3) of Cr.P.C. Whereas, nowhere in the counter statement filed by the respondent that the file sought for by the revision petitioner is treated by the prosecution as case diary. When the prosecution itself has not come forward with a clear case that the file sought for by the revision petitioner is their case diary, the learned trial judge would not have come to such a conclusion that the file sought for is to be construed as case diary. Hence, in the considered opinion of this Court, the findings of the learned judge are

unsustainable. No doubt the meaning of Section 173(2) Cr.P.C. is binding in nature with regard to the usage of the case diary in the trial proceedings. At the same time, the documents sought for by the revision petitioner is not claimed as case diary by the prosecution then the learned trial Court can not presume that such document may be the case diary of the prosecution. So, at this juncture, the finding of the learned trial judge is liable to be interfered with.

8. Further, the resorting of Section 44 of the Foreign Exchange Regulation Act with regard to disclosure of the information it specifies that the contents of any documents which have come into his possession or control during the course of any investigation or proceedings under this Act would be useful for, or relevant to any proceedings which is in progress, he may disclose such document or any information contained therein as he thinks fit to an officer duly authorized by or under such other law.

9. The analysis of the said provision, according to the learned trial judge is that the privilege of keeping the information as highly confidential and protected. Further, the learned trial judge has reiterated that the revision petitioner/accused has failed to adduce acceptable reasons for the production of the documents. On the other hand, the appreciation of the provision that is Section 44 of the FERA would authorize the disclosure of such document during the course of any investigation or proceeding under this Act would be useful. So, when the particular document is sought for from the prosecution record, unless the prosecution has come forward that the documents sought for is form part of a case diary, otherwise the same may be furnished to the revision petitioner/accused to secure the ends of justice.

10. Moreover, it is relevant to note here that the prosecution has not made any claim that their case would be prejudiced if the documents sought for by the revision petitioner is furnished upon him. Further, this Court is very conscious in taking note of the fact of long pendency of case since 1996. That cannot be the ground to deny the legal claim of the revision petitioner. Moreover, the perusal of the counter statement of the respondent before the learned trial Court would show that they have relied on Section 72 of the Foreign Exchange Regulation Act with regard to the presumption as to documents in certain cases. The analysis of the provision would answer that "where any document is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any offence under

this Act alleged to have been committed by any person, and such document is tendered in any proceedings under this Act in evidence against him, or against him and any other persons who is proceeded against jointly with him, the Court or the adjudicating officers, as the case may be, shall- (a) presume, unless the contrary is proved, that the signature any every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonable assume to have been signed by, or to be in the handwriting of , any particular person, is in that persons' handwriting and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested, (b) admit the document in evidence not withstanding that it is not duly stamped, if such document is otherwise admissible in evidence; (c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document." But the case on hand the prosecution has not pleaded that the documents sought for by the revision petitioner are in their hands, contradictorily, the plea of the prosecution that they are the internal communications and correspondence of their officials and especially those documents are not relied on by them.

11. Apart from that the learned trial judge has given reasoning for each document as to why the revision petitioner is not entitled to get those documents. However, the learned trial judge has not considered the relevant factor that the prosecution has pleaded any prejudice if at all those documents is furnished upon the revision petitioner. As discussed above, the prosecution has also not pleaded and it is not their case that the production of the documents sought for by the revision petitioner would nothing but the production of case diary. In the considered opinion of this Court that when the prosecution itself has not come forward with such a plea, then a duty is casting upon the Court concerned to order the prosecution to furnish upon the documents sought for by the revision petitioner as the prime object of the Court of law is to secure the justice with complete fairness on either side without any bias.

12. For the foregoing discussions, this Court is convinced the grounds raised in the criminal revision and the reasonable legal force in the case of the revision petitioner is fit for consideration. Accordingly, the Criminal Revision Case is liable to be allowed.

13. In the result:

(a) This Criminal Revision Petition is allowed by setting aside the order in CrI.M.P.No.2755 of 2017 in E.O.C.C.No.27 of 1996, dated 08.12.2017, on the file

of the learned Additional Chief Metropolitan Magistrate (EO-II), Allikulam, Chennai-600 003;

(b) Moreover, the long pendency of the case is concerned this Court is hereby direct the learned trial Court to conduct the trial proceedings of the case in E.O.C.C.No.27 of 1996 on day-to-day basis and to conclude the trial proceedings within a period of six months from the date of receipt of a copy of this order;

(c) the appearance of the petitioner/accused is dispense with except the appearance to be directed the learned Magistrate.

14. With the above observations, the Criminal Revision Case stands allowed. Connected Miscellaneous Petitions are closed. There is no order as to costs.

Today, after pronouncing the order, the learned counsel for the petitioner is appeared before this Court and submitted that since the direction to the trial Court to complete the trial proceedings within a period of six months is very much difficult to proceed the case because the petitioner has already filed a petition for Joint trial of the case in E.O.C.C.No.27 of 1996 along with C.C.No.84 of 2001 and the same was dismissed by the trial Court.

2. The learned counsel for the petitioner also submitted that against the said order of dismissal, the petitioner has filed two revision cases before this Court in Crl.R.C.Nos.512 and 513 of 2018 and this Court ordered stay of all further proceedings in E.O.C.C.No.27 of 1996, the same is pending before this Court. Therefore, the order passed by this Court to complete the trial proceedings within a period of six months will not be taken place, because of the pendency of the Crl.R.C.Nos.512 and 513 of 2018.

3. Therefore, the order of direction for completion of trial proceedings within a period of six months is not feasible to the trial Court, due to the pendency of the above Crl.R.C.Nos.512 and 513 of 2018 along with the stay. Therefore, the order passed by this Court in this order in respect of direction to complete the trial proceedings is strike of.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

vs

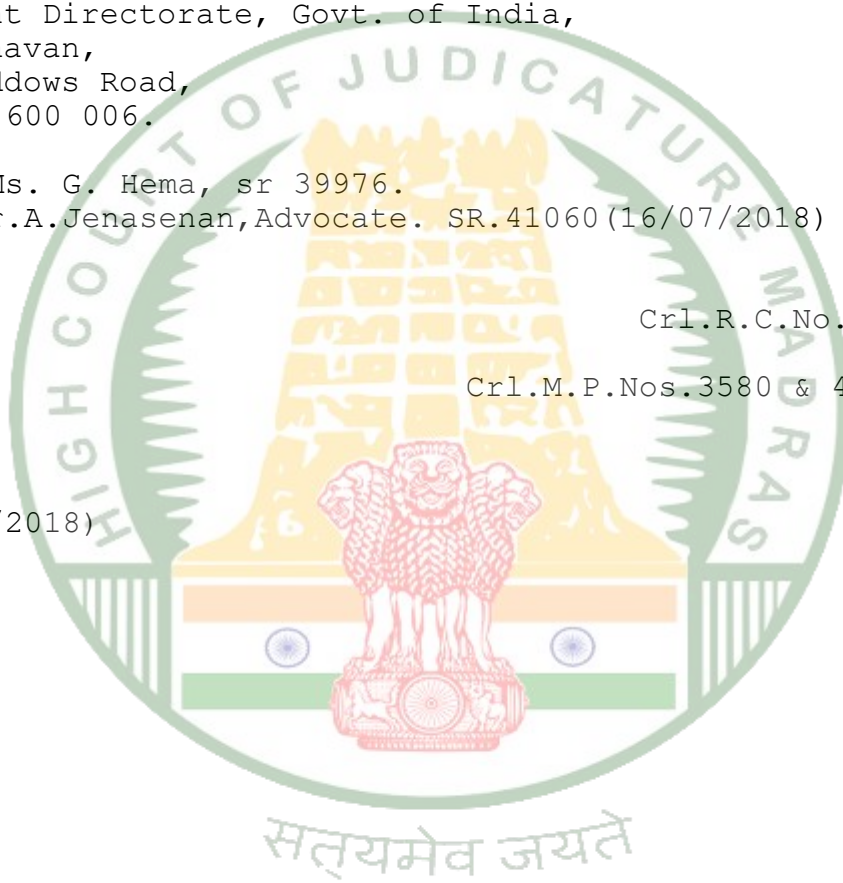
To

1. The Additional Chief Metropolitan
Magistrate (EO-II),
Allikulam, Chennai - 600 003.
2. Do Thro The Chief Metropolitan Magistrate
Chennai.
3. The Assistant Director,
Enforcement Directorate, Govt. of India,
Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006.

+1 CC to Ms. G. Hema, sr 39976.
+2cc to Mr.A.Jenasenan, Advocate. SR.41060 (16/07/2018)

CrI.R.C.No.301 of 2018
and
CrI.M.P.Nos.3580 & 4774 of 2018

BS (CO)
GSP (04/07/2018)



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