IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.02.2017
Judgment Pronounced on : 27.06.2018

CORAM

THE HONOURABLE MR. JUSTICE S.BASKARAN

Crl.R.C.Nos.22, 33 and 34 of 2017
and
Crl.M.P.Nos.161,369 and 370 of 2017

Crl.R.C.No.22 of 2017
M.Premkumar
... Petitioner/2nd Accused

Vs.

State represented by
Inspector of Police,
Central Bureau of Inviestigation,
Anti-Corruption Branch(ACB)
Shastri Bhavan, Nungambakkam,
Chennai-600 006.
... Respondent/Complainant

(Crime No.RC MA1 2016 A0051)

Crl.R.C.No.33 of 2017
J.Shekar Reddy
... Petitioner/Accused No.1

Vs.

State represented by
Inspector of Police,
Central Bureau of Inviestigation,
Anti-Corruption Branch(ACB)
Shastri Bhavan, Nungambakkam,
Chennai-600 006.
.. Respondent/Complainant

(Crime No.RC MA1 2016 A0051)
Crl.R.C.No.34 of 2017
K.Srinivasulu
... Petitioner/3rd Accused

Vs.

State represented by
Inspector of Police,
Central Bureau of Inviestigation,
Anti-Corruption Branch(ACB)
Shastri Bhavan, Nungambakkam,
Chennai-600 006.

... Respondent/Complainant

(Crime No.RC MA1 2016 A0051)

PRAYER IN CRL.R.C.No.22 OF 2017:

Criminal Revision Case has been filed under Section 397 r/w 401 Cr.P.C. to call for the records in Crl.M.P.No.4 of 2017 in RC MA1 2016 A0051 dated 03.01.2017, revise the same by setting aside the order of remand of XI Additional Judge, (Special Court for CBI Cases), Chennai, dated 03.01.2017.

PRAYER IN CRL.R.C.No.33 OF 2017:

Criminal Revision Case has been filed under Section 397 r/w 401 Cr.P.C. to call for the records of the order of remand dated 03.01.2017 in Crime No. RC MA1 2016 A0051 dated 30.12.2016 on the file of the learned XI Additional Judge, (Special Court for CBI Cases), Chennai, and set aside the same as against the petitioner.

PRAYER IN CRL.R.C.No.34 OF 2017:

Criminal Revision Case has been filed under Section 397 r/w 401 Cr.P.C. to call for the records of the order of remand dated 03.01.2017 in Crime No. RC MA1 2016 A0051 dated 30.12.2016 on the file of the learned XI Additional Judge, (Special Court for CBI Cases), Chennai, and set aside the same as against the petitioner.

For Petitioner : Mr.Yashadvaradhan S.C.,
for.Mr.Sathish Sunder.
(in Crl.RC.No.22/2017)

Mr.B.Kumar, Senior Counsel,
for Mr.B.Praveen(CRL.Rc.33/17
Mr.V.Raghavachari
for Mr.B.Praveen
(in Crl.RC.No.34/2017)

For Respondent : Mr.K.Srinivasan
Spl.P.P for CBI Cases

COMMON ORDER

The petitioners in Crl.R.C.Nos.33 and 34 of 2017, who are the Accused 1 and 3 in FIR No.RC MA1 2016 A0051 and the petitioner in Crl.R.C.No.22 of 2017, who is the second accused in FIR No.RC MA1 2016 A0051 have come forward with the present petitions seeking to keep in abeyance, the petitions seeking police custody of themselves in Crl.M.P.No.4 of 2016 and to set aside the order of remand dated 03.01.2017 passed in FIR No.RC MA1 2016 A0051.

2.The petitioners in Crl.R.C.Nos.33 and 34 of 2017, who are Accused Nos.1 and 3 in FIR No.RC MA1 2016 A0051, contended that on 08.12.2016, the Income Tax Authorities conducted search and seizure at the premises of the petitioners at Chennai and Vellore and recovered currency and gold. Both the accused/petitioner in Crl.R.C.Nos.33 and 34 of 2017 stated that they were enquired by the Income Tax Department authorities on 08.12.2016, 09.12.2016, 10.12.2016 and 11.12.2016 and thereafter they were enquired on 12.12.2016 and subsequently, on 20.12.2016 around 3.30 p.m., the respondent took the petitioners/A-1/A-3 for enquiry and continued the enquiry till 5.30 p.m., the next day i.e., 21.11.2016 and then they were arrested and remanded in FIR No.RC MA1 2016 A0040.

3.The petitioners further states that the above said FIR No.RC MA1 2016 A0040 was filed on the basis of information given by the Income Tax Authorities on 19.12.2016 for the offence under Section 102(b), r/w 409, 420 of IPC and 13(2), r/w 13(1)(C) and 13(1)(d) of Prevention of Corruption Act and the same was registered pursuant to the search conducted at the premises of the petitioner in Chennai and Vellore. Thereafter, the respondent filed a petition seeking custody of the petitioners in FIR No.RC MA1 2016 A0040 before the XI Additional Special Judge for CBI Cases, Chennai, while the petitioners moved bail application before the same Judge. Both the applications were taken up for hearing on 30.12.2016 and the said Court pleased to dismiss both the petition. The petitioners contends that to circumvent the said order and to fill up the lacuna in the prosecution case. So as to secure police custody of the petitioners, the respondent registered the subsequent FIR No.RC MA1 2016 A0051 on 30.12.2016 and thereafter the petitioners, who are already in judicial custody was remanded in FIR No.RC MA1 2016 A0051 on 03.01.2017. As the said remand was in violation of settled principle of law as no second FIR can be registered for one and same offence. The petitioners contends that they are not public servants and in the absence of any Bank Officials or public servant being named, the provisions under Section 13(1)(d) and 13(2) of PC Act will not be attracted and

FIR is not maintainable. The petitioner further stated that the basic ingredients to make out the offence alleged in the FIR is lacking. The respondent filed M.P.No.4 of 2017 in FIR No.RC MA1 2016 A0051 seeking police custody of the petitioner. Though the earlier petition for the same relief filed in FIR No.RC MA1 2016 A0040 was rejected by the Court below on 30.12.2016, registering of second FIR against the petitioner on the basis of same complaint and same transaction is not permissible. Thus, the petitioner seeks to set aside the order of remand dated 03.01.2017 in FIR No.RC MA1 2016 A0051 and to keep in abeyance the petition seeking police custody filed by the respondent in Crl.M.P.No.4 of 2016.

4. The 2nd Accused who is the petitioner in Crl.R.C.No.22 of 2017 stated that on 08.12.2016, search and seizure was conducted at the residences of A-1 by the Income Tax Authorities and they are stated to have recovered currency to the tune of Rs.34 crores. On information of the Income Tax Department, the respondent, viz., CBI, ACB commenced investigation by registering the FIR No.RC MA1 2016 A0040 on 19.12.2016 against the petitioner and other accused under Section 102(b), r/w 409, 420 of IPC and 13(2), r/w 13(1)(C) and 13(1)(d) of Prevention of Corruption Act. The allegations against the petitioner/A2 and other accused is that with the help of unknown Bank Officials, they converted old demonetized notes of Rs.500/- and Rs.1000/- denomination into Rs.2000/- new currency notes. This petitioner/A-2 was summoned and examined by the respondent on 21.12.2016 and thereafter he was arrested and remanded on 22.12.2016. While so, on 21.12.2016 itself, the respondent filed an application for police custody of A-2/the petitioner in Crl.RC.No.22 of 2017, but the same was returned as the petitioner was not arrested on 21.12.2016. The respondent without representing the said petition, subsequently, filed Crl.M.P.No.6435 of 2017 seeking police custody and the same was dismissed on 30.12.2016 by the learned XI Additional Special Judge for CBI Cases, Chennai and the bail application Crl.M.P.No.6354 of 2016 filed by the petitioners was also dismissed. While so, on the same day i.e.,on 30.12.2016, the respondent filed the FIR No.RC MA1 2016 A0051, wherein the petitioner is shown as second accused and arrested the petitioner who was in judicial custody in FIR No.RC MA1 2016 A0040. Pursuant to the arrest, the petitioner was produced before the concerned Court on 03.01.2017 and as per the order passed in Crl.M.P.No.4 of 2017 dated 03.01.2017, the petitioner was remanded to the judicial custody in FIR No.RC MA1 2016 A0051. As the said remand was in violation of settled principle law, the petitioner has come forward with the present revision, seeking to set aside the order of remand dated 03.01.2017, passed in Crl.M.P.No.4 of 2017 by the XI Additional Special Court for CBI Cases, Chennai.

5.On the other hand, opposing the claim of the petitioners, by filing memorandum of objection, the respondent contended that the accused in conspiracy with the unknown Bank officials and public servants converted unaccounted cash held by them in the form of old demonetized currency to new Rs.2000 currency notes, thereby committed offence under Section 102(b), r/w 409, 420 pf IPC and 13(2), r/w 13(1)(C) and 13(1)(d) of Prevention of Corruption Act. As the petitioners/accused were already in judicial custody in FIR No.RC MA1 2016 A0040, they were formally arrested in the FIR No.RC MA1 2016 A0051 on 02.01.2017 in Central Prison, Puzhal, Chennai and produced before the XI Additional Special Court for CBI Cases, Chennai on 03.01.2017 and they were remanded Judicial Custody till 17.01.2017. Pursuant to the respondent's plea for police custody, the said Court granted two days police custody from 04.01.2017 to 06.01.2017. The respondent contended that the offences committed as per FIR No.RC MA1 2016 A0040 is different from the alleged offence in FIR No.RC MA1 2016 A0051. The Income Tax Department made search and seizure in different places under different panchanamas. Thus, the allegations in both the FIR are different and distinct transaction and the place of seizure also different. Thus, the respondent contends that the petitioners were arrested as per law and FIR No.RC MA1 2016 A0051 relates to separate distinct offences from the one alleged in the FIR No.RC MA1 2016 A0040. Further, as per the orders of the Court below, the police custody of the accused was granted from 04.01.2017 to 06.01.2017 and again from 10.01.2017 to 12.01.2017 and thereafter accused persons were remanded to judicial custody. Thus, averments made by the petitioners in the Criminal Revisions Petitions are devoid of merits and as such the respondent sought for dismissal of the petitions.

6. Heard Both. As stated above, the petitioners contended that the offence alleged in FIR No.RC MA1 2016 A00540 and subsequent FIR No.RC MA1 2016 A0051 are one and the same and inter connected with each other. It is further contended that the two FIRs consists of same allegation arising out of one and the same. Both the FIRs were registered on the basis of information from the same source i.e., the Income Tax Authorities. Except for the quantum of currency, the other aspects of the alleged offence in both the FIRs is one and the same. Further, the petitioners are not public servants and there is nothing on record to identify and connect any public servant or Bank officials who colluded with the petitioners in committing the alleged offence. Further, the first accused/petitioner in Crl.R.C.No.33 of 2017 and the A-2/Petitioner in Crl.R.C.No.22 of 2017 and the A-3/Petitioner in Crl.R.C.No.34 of 2017 have explained to the Income Tax Authorities their source of income and also accounted for the

cash seized by the authorities. As such the respondent after rejection of their plea for police custody of the petitioner in M.P.No.4 of 2017 in FIR No.RC MA1 2016 A0040 on 03.01.2017 have subsequently registered FIR No.RC MA1 2016 A0051, so as to secure the police custody of the petitioners. This, according to the petitioners are not permissible and registration of the second FIR is not sustainable. Thus, the petitioners sought for setting aside the order of remand dated 03.01.2017 passed in M.P.No.4 of 2017 in FIR No.RC MA1 2016 A0051.

7.The respondent as stated above has strongly opposed the said claim contending that the offence involved in both the FIRs are distinct and different and remand order passed in M.P.No.4 of 2017 on 03.01.2017 by the XI Additional Special Court for CBI Cases is in accordance with law.

8.The materials on record is perused. The petitioner in Crl.R.C.No.33 and 34 of 2017 have preferred Crl.O.P.Nos.409 and 410 of 2017 under Section 482 of Cr.P.C. seeking to quash the FIR No.RC MA1 2016 A0051 registered against them and after hearing both sides by order dated 27.06.2018, this Court has allowed all the Criminal Original Petitions and quashed the FIR No.RC MA1 2016 A0051. As such the basis of the case itself is no longer existing.

9.As stated earlier, the respondent/ACB, CBI took police custody of the petitioners from 04.01.2017 to 06.01.2017 and again from 10.01.2017 to 12.01.2017 and thereafter the petitioners were in judicial custody only.

10.Further, it is admitted by both sides that the petitioners have been subsequently enlarged on bail and they are no longer in judicial custody. As such in view of the order passed in Crl.O.P.Nos.409, 410, 1621 and 1622 of 2017 and subsequent development of the accused being released on bail and keeping in mind the changed circumstances, it is clear that nothing survives in the criminal revision petitions and it has become infructuous. In view of the above said discussion, the criminal revision petitions are dismissed as unnecessary without going into merits.

11.In the result, the Criminal Revision Petitions are dismissed as infructuous. Consequently, connected M.Ps. are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The XI Additional Judge,
Special Court for CBI Cases,
Chennai

2.The Inspector of Police,
Central Bureau of Inviestigation,
Anti-Corruption Branch(ACB)
Shastri Bhavan, Nungambakkam,
Chennai-600 006.

3.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.B.Praveen, Advocate, S.R.No.40838 & 40840

+1cc to Mr.K.Srinivasan, Advocate, S.R.No.40632

Crl.RC.Nos.22, 33 and 34 of 2017

KJI(CO)
GSP(11/09/2018)