

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Crl.RC.No.393 of 2008

The State rep. by the
Inspector of Police,
CBI/ACB/Chennai.

.... Petitioner/Complainant

Vs.

A.P.Mohammed Ali

.... Respondent/Accused

Prayer:- Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure to set aside the order in Crl.M.P.No.2077 of 2007 in C.C.No.35 of 2005 dated 15.02.2008 on the file of the Additional Special Judge for CBI Cases, Chennai.

For Petitioner : Mr.K.Srinivasan
Special Public Prosecutor

For Respondent : No appearance

O R D E R

This Criminal Revision Case is filed by the Inspector of Police, CBI/ACB/Chennai, against the order dated 15.02.2008 in Crl.M.P.No.2077 of 2007 in C.C.No.35 of 2005 passed by the learned Additional Special Judge for CBI Cases, Chennai, wherein the Special Court allowed the petition filed under Section 91 of the Code of Criminal Procedure by the respondent/accused and directed the CBI officials to produce certain documents, against which, the present revision is filed.

2.The brief facts of the case are as follows:-

(i) The respondent/accused, along with ten others, is charged for the offences under Sections 120-B r/w. 420, 467, 468, 471, 474, 475, 201, 218, 255, 258 and 259 of the Indian Penal Code and under Sections 13(2) r/w 13(1)(d) of the PC Act, 1988.

(ii) The respondent/accused had appeared in response to the summons issued to him and he was furnished with copies of some

documents which the prosecution proposed to rely. Thereafter, the lower Court framed charges against the respondent/accused and the case is posted for trial. In order to effectively cross-examine the prosecution witnesses and establish his innocence, the respondent needed some documents as stated in the petition, and wanted them to be summoned. According to the respondent, those documents are all official documents kept in the Office of the Police Department and other Offices mentioned in the petition and there will not be any difficulty in producing the same before this Court and unless the documents were summoned, the respondent/accused would greatly suffer in establishing his innocence. Accordingly, the respondent filed a petition for summoning nearly 72 documents.

(iii) The prosecution had filed a detailed counter stating that the respondent/accused is entitled to defend himself and seek remedy under Section 243(2) of the Code of Criminal Procedure. When the prosecution closes its evidence, statement of accused persons are recorded under Section 313 of the Code of Criminal Procedure and if the accused wishes, he can examine his own witnesses to prove his innocence. At that time, the Court will provide opportunity to the accused person, for his defense as, under Section 243(2) of the Code of Criminal Procedure, the accused has right to make a request to the Court for summoning of documents and in this case, that stage has not yet come.

3. The learned Special Public Prosecutor appearing for the petitioner would submit that even under Section 91 of the Code of Criminal Procedure, the right of summoning documents by the accused person, is not absolute one. The Court is empowered to look into the aspect of necessity or desirability of the documents to be called for. However, the Lower Court without keeping those procedure in mind, has allowed the petition in CrI.M.P.No.2077 of 2007 in C.C.No.35 of 2005. It is his further submission that after filing the revision petition, the learned Additional Special Judge for CBI Cases, Chennai, has examined 78 witnesses out of 190 witnesses.

4. The learned Special Public Prosecutor would further submit that though the name of the respondent is printed in the cause list, he has not chosen to appear either in person or through counsel. However, it is his submission that this petition may be allowed with liberty to the respondent/accused to file an appropriate petition, after the questioning under Section 313 of the Code of Criminal Procedure, by invoking Section 243(2) of the Code of Criminal Procedure.

5. I have heard the learned Special Public Prosecutor and gone through the entire materials on record.

6.Though petition filed under Section 91 of the Code of Criminal Procedure was to summon 72 documents, all those 72 documents are conventional in nature. All those documents belong to Police Department. None appeared on behalf of the respondent/accused before this Court to explain as to why all those documents were to be summoned and how they bear relevancy for the purpose of proving his innocence. Further, it is the submission of the learned Special Public Prosecutor that only 78 prosecution witnesses were examined out of 190 witnesses. In spite of service of notice and his name being printed in the cause list, he has not chosen to appear before this Court to redress his grievances.

7.Hence, I am inclined to set aside the impugned order dated 15.02.2008 passed in CrI.M.P.No.2077 of 2007 in C.C.No.35 of 2005, by the learned Additional Special Judge for CBI Cases, Chennai. However the respondent/accused is at liberty to file an appropriate petition at the appropriate time, by invoking Section 243(2) of the Code of Criminal Procedure, for calling of the records under Section 91 of the Code of Criminal Procedure. If any such petition is filed, the Trial Court has to consider the necessity and desirability of the documents, which may be called for and pass orders.

8.Accordingly, the Criminal Revision Case stands allowed with the above direction.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ah / smn2

To

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

2.The Inspector of Police,
CBI/ACB/Chennai.

3.The Public Prosecutor,
High Court, Madras.

Copy To: The Section Officer,
Criminal Section, High Court, Madras.

CrI.RC.No.393 of 2008

SSD(CO)
CSL/26.06.2019