

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.O.P.No.15728 of 2009

B.Sathya

...Petitioner

Vs.

State represented by
The Inspector of Police,
Central Crime Branch,
Egmore, Chennai -8,
Crime No.507 of 2006.

...Respondent

PRAYER: This Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in CC. No.2394 of 2007 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai and quash the same as far as the petitioner is concerned.

For Petitioner : J.Karuppiah for
M/s.G.Vijayakumar

For Respondent : Mr.T.Shunmuga Rajeswaran
Government Advocate (Crl. side)

O R D E R

This Criminal Original Petition is filed by the petitioner to quash the proceedings pending against him in C.C.No.2394 of 2007 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. The learned counsel for the petitioner would submit that the prosecution, on 20.11.2008, has filed an application under Section 216 Cr.P.C., r/w 319 Cr.P.C., for amendment of charge sheet. Though this Criminal Original Petition is filed challenging the final report, the counsel for the petitioner now confined his submissions as to the maintainability of this application filed under Sections 216 & 319 Cr.P.C.

3. According to the learned counsel for the petitioner, the prosecution has filed the application under Sections 216 & 319 Cr.P.C., when the charges have not been framed. By way of this

petition, the prosecution intends to add eight more witnesses. But, no reason, whatsoever, has been adduced by the prosecution for the proposed amendment. Moreover, this application was filed by the Inspector of Police, Central Crime Branch, whereas, the appropriate authority to file such an application is the Additional Public Prosecutor. When such being the position, the learned Magistrate, without any application of mind, has taken the application on file, which is not at all maintainable.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent.

5. This Court has called for the records and perused the same. Though the final report was filed in the year 2006, the charges have not been framed. It is seen from the records that on 28.07.2008, the prosecution has come forward with an application under Section 173(8) of Cr.P.C., to examine some more witnesses and to record their statements. But, they have not assigned any reasons in this application. This application filed under Section 173(8) Cr.P.C. was posted for orders by the learned Magistrate on 05.08.2008 and thereafter, the same was returned on 28.08.2008 with an endorsement "'file proper petition through Additional Public Prosecutor'".

6. From the case diary of the police, it is seen that on 20.11.2008, the Inspector of Police, Central Crime Branch, has filed an application under Sections 216 & 319 of Cr.P.C, seeking amendment. Even in this application also, the prosecution has not stated any reasons and that too, at a stage where the charges have not been framed, this application came to be filed.

7. Be that as it may, it is seen that this application filed under Sections 216 & 319 Cr.P.C., has not been numbered and therefore, it cannot be presumed that the Court below has taken cognizance and pass orders in this application. At the same time, when the charges have not been framed, it would not be proper to include the witnesses by the Prosecuting Agency by way of an application under Sections 216 & 319 of Cr.P.C, without assigning any reasons. The proper course would be by filing necessary application under Section 173(8) of Cr.P.C., before the concerned Magistrate assigning the reasons as to why these witnesses were not examined at the relevant point of time and when these witnesses have emerged and what are the new materials that emerged after the filing of the final report. In the event of any such application being filed, it is open to the Magistrate to consider the same in accordance with law and decide the same, on its own merits.

8. Considering the fact that the charge sheet has been filed in the year 2006 and the matter is pending without even framing of charges, the learned Magistrate is directed to proceed with the trial and conclude the same as expeditiously as possible. In fine, this Criminal Original Petition is disposed of.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

rkp/rli/gk
To

- 1.The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.
 - 2.The Inspector of Police,
Central Crime Branch,
Egmore, Chennai -8,
Crime No.507 of 2006.
 - 3.The Public Prosecutor,
Madras High Court, Madras.
- +1 CC to Mr.G. Vijay Kumar, Advocate sr 85751

Crl.O.P.No.15728 of 2009

RSK(CO)
SP(30/07/2019)

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