IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.20174 of 2018 and
Crl.M.P.No.10769 and 10770 of 2018

Mr.K.Anandh ...Petitioner/Accused No.3

/Vs/

State, rep. By its
Additional Superintendent of Police
CBI/EOW/Chennai
Rc.No.ME1/2011/E/0001 ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under section 482 of Cr.P.C., to call for the entire records pertaining to the order dated 25.07.2018 in Crl.M.P.No.357 of 2018 in C.C.No.1121 of 2012 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, now at Moore Market Court Complex, Allikulam, Chennai and set aside the same.

For Petitioner: Mr.N.Baaskaran
For Respondent: Mr.K.Srinivasan
Special Public Prosecutor
for CBI Cases

O R D E R

This Criminal Original Petition has been filed by the petitioner/accused no.3 to set aside the order dated 25.07.2018 in Crl.M.P.No.357 of 2018 in C.C.No.1121 of 2012 passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai allowing the petition in part to recall PW3, Pw4, PW10, PW11, PW18, PW19, PW29 and PW30 and dismissing the petition in respect of PW13, PW14 and PW16.

2. The petitioner is arrayed as A3 in C.C.No.1121 of 2012. The petitioner along with other accused was charged for the offences under Sections 120(B) r/w 467, 471 r/w 468, 420 of IPC.

3. The case of the prosecution is that the petitioner conspired with the other accused and created fabricated documents, thereby the accused availed cash credit facility and thereafter, by producing some more fake documents, the facility was enhanced and thereafter, the funds received from the Bank were diverted for personal use other than to what it

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was availed for and by diversion of funds, properties were purchased and thereafter, smaller properties purchased were substituted in respect of larger properties given as collateral security and thereby, the Bank was cheated.

4. The complainant had cited totally 47 witnesses and also cited 863 documents and copies of the documents were also served on the accused. Totally, 47 witnesses were examined and at the stage of questioning under Section 313 of Cr.P.C, the respondent/complainant had filed a petition to recall the witnesses to mark certain documents which were left out to be marked. The petitioner/accused No.3 had filed a counter stating that the respondent has not given any sound reason for recalling the witnesses and that re-examination of prosecution witnesses cannot be permitted for mere filling up the lacunae in this case and that the prosecution cannot pray for recalling the witnesses for the simple reason of oversight committed by the Public Prosecutor during trial. However, the learned Magistrate had given a finding that some of the witnesses were repeated and overlapped and had dismissed the petition in part in respect of recalling PW13, PW14 and PW16 and allowed the petition in respect of PW3, PW4, PW10, PW11, PW18, PW19, PW29, and PW30. Aggrieved by the said order, this Criminal Original Petition has been filed by the petitioner/accused No.3 to set aside the order of recalling the witnesses.

5. Mr. N. Baaskaran, the learned counsel appearing for the petitioner/accused No.3 vehemently assailed the order passed by the learned Magistrate allowing the petition to recall. He would further submit that the respondent had sought to mark 60 documents through the prosecution witnesses and it has been done only with a malafide intention to protract the proceedings. He would further submit that the order has been passed without application of mind and would further submit that the listed documents 156 to 164 are sought to be marked through PW3 and PW11 and listed document 155 is sought to be marked through PW11 and PW14 and listed documents 165 to 170 are sought to be marked through PW11 and PW13 and listed document 149 is sought to be marked through PW11 and PW16 and he would further submit that the learned Judge has not applied his mind with regard to marking the same document by two different witnesses and he would further submit that by allowing the respondent/complainant to mark these documents by recalling the witnesses, the prosecution has attempted to fill up the lacunae and thereby causing prejudice to the petitioner/accused. He would submit that the defects in the prosecution case cannot be cured by marking of a document at a belated stage and examining witnesses in support thereof and would rely on the judgement of this court reported in 2000 CrLJ 624 and 1991 Madras LW (Crl.) 42. He would further submit that the petition has been filed by the respondent much belated stage, at the stage of questioning under Section 313 of Cr.P.C.

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6. Per contra, the learned Special Public Prosecutor for CBI cases would would that the learned Judge has passed the order applying his mind and has partly allowed the petition in respect of certain witnesses and in respect of other witnesses, the petition has been dismissed. He would further submit that the Hon'ble Apex Court in its decision reported in (2009) 2 Supreme Court Cases (Cri) 455 (Godrej Pacific Tech. Limited vs. Computer Joint India Limited) has held that the object of underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined on either side. He would further submit that the determinative factor is whether it is essential to the just decision of the case. He would further submit that the section is not only limited for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. He would also submit that the significant expression that occurs is at any stage of any inquiry or trial or other proceeding before this Court. He would also submit that the documents sought to be marked through the witnesses are not fresh documents whereby the accused is taken by surprise and would submit that these documents have been filed along with the charge sheet and that no prejudice would be caused to the petitioner/accused if these documents are marked. He would further submit that the allegation attributed to the petitioner is that he has furnished forged financial statement, fabricated Income-tax documents and whereas, these documents which are sought to be marked are in respect of A1 and A2 and that marking these documents will not be in any way cause prejudice to the present petitioner and would submit that the following is the details regarding the documents.

MEMO OF EVIDENCE (DOCUMENTARY) IN RC 1 (E)/ 2011/CBI/EWO/CHENNAI

Sl.No.	D.No.	Description of documents	Gist of documents	PWs
1	33	Valuation report of the vacant land - Ref.No.L/07:08/BOI/R/24 dt. 28.06.2007 of property S.No.18/1A1F1 of Kannagapattu Village, Kancheepuram Dist. (Original) 9 pages.	It proves the valuation of property at Kannagapattu Village	19

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Sl.No.	D.No.	Description of documents	Gist of documents	PWs
2	34	Letter from 53 Computers dated 17.07.2007 addressed to Branch requesting enhancement of credit limit (original)1 page.	It proves the request of M/s.S3 Computers requesting enhancement of CC Limit from Rs.2 Crores to Rs.4 Crores	4
2	35	Stock Inspection Report dt. 24.07.2007 by Mr.V.Narayanan Officer (Original) - 1 page	It proves that the stock inspected by V.Narayanan of M/s.S3 Computers.	4
3	37	Auditor's Report with audited financial statement for the year ended 31.03.2007 (copy) - 15 pages.	It proves the preparation of documents A-4.	3
4	39	Pre-sanction inspection report dt. 26.07.2007 by Mr.V.Narayanan, Officer (original)-1 page.	It proves the inspection for the enhancement of the loan.	30
5	40	Letter Ref.No.CHN:ADV:VN:51 dt. 01.08.2007 addressed to ICICI Bank Ltd., Mount Road Branch (original)-1 sheet.	It proves the dealing of A-2 with ICICI Bank, Mount Road Branch	30
6	41	Letter Ref.No.CHN:ADV:VN:50 dt.01.08.2007 addressed to UTI Bank Ltd., Mount Road Branch (original)-1 sheet.	It proves the dealings of A-2 with UTI Bank, Mount Road Branch.	30
7	42	Letter dt. 06.08.2007 from AXIS Bank, Anna Salai, Chennai addressed to Mr.Sivakumar (original)-(1 sheet).	It proves the dealings of A-2 with AXIS Bank, Anna Salai Branch.	30
8	43	Statement of account of M/s.S3 Computers - A/c. No.168010200000541 with AXIS Bank Ltd, Anna Salai, Chennai for the period 01.02.2007 to 04.08.2007(copy) - (2 pages)	It proves the diversion of funds from Bank of India to AXIS Bank to the account of A-2 (in the name of M/s.S3 Computers)	30

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Sl.No.	D.No.	Description of documents	Gist of documents	PWs
9	61	Letter dt. 13.05.2008 from S3 Computers to Branch (original)-1 page.	It proves the request of M/s.S3 Computers for the release of property at Survey No.18/1A1/F1, Kanakapattu Village.	10
10	62	Branch Memo dt. 21.05.2008 submitted to ZM with noting and approval by ZM, Chennai Zone on page - 5 (copy) - 5 pages.	It proves the process of request and sanction of release of property and substitution of property at Kanakapattu village with the property of Pudur Village.	3
11	63	IOM No.CZO:CR:AM:08-09/243 of 22.05.2008 from ZM, Chennai Zone to Chennai main (original)-1 page.	It proves the proces of request and sanction of release of property and substitution of property at Kanakapattu village with the property of Pudur Village.	3
12	64	IOB No.CHN:CREDTI:RP of 31.05.2008 from Branch to ZM, Chennai (original) - 1 page.	It proves the process of request and sanction of release of property and substitution of property at Kanakapattu Village with the property of Pudur Village.	3

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Sl.No.	D.No.	Description of documents	Gist of documents	PWs
13	67	Branch Memorandum CHN:ADV:RP dt. 31.10.2008 to ZM with approval of ZN (original)- 1 page.	It proves the recommendation of the branch for the substitution of the property after closing the mortgage loan of R.Sivakumar.	11
14	68	Branch Sanction letter CHN:ADV:RP dt. 28.03.2009 addressed to M/s.S3 Computers acknowledged by the borrower on all pages (original) 3 pages.	It proves the sanction of additional CC limit and the condition thereof.	11
15	144	Stock Inspection Report dt. 03.12.2006 by V.Narayanan (original) -2 pages.	It proves that the stock inspected by V.Narayanan of M/s.Lotus Computers.	11
16	149	Statement of account No.633605015085 of Lotus Computers with ICICI Bank from 01.08.2008 to 31.01.2009 unsigned - 111 pages.	It proves the transactions as collected by Bank of India from ICICI Bank.	11 & 16
17	150	Letter dt. 15.06.2008 from M/s.Lotus Computers requesting more time for repayment of overdue amount in CC (original) -1 page.	It proves the request of M/s.Lotus Computers for rescheduling of the Bank.	18
18	151	Branch proposal No.CHN:C & IC:2008-09 dt. 01.07.2008 with sanction of Zonal Manager on page 3 (original) -3 pages.	It proves the request of M/s.Lotus Computers for rescheduling of the Bank.	18
19	152	Letter from M/s.Lotus Computers dt. 10.10.2009 addressed to Zonal Manager and copy to Branch - 2 pages.	It proves the request of A-1 for the postponement of repayment.	18

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Sl.No.	D.No.	Description of documents	Gist of documents	PWs
20	153	Notice under 13/2 of SARFEASI reference CHN:ADV:RN:2009-10- 351 dt. 31.12.2009 addressed to borrower/guarantor (original) - 3 pages.	It proves the SARFAESI Act action of the Bank of India.	11
21	154	Closed envelop (REGD ACKDUIE POST) addressed to M/s.Lotus Computers dt. 13.01.2010 returned undelivered with ACK. Card attached (original) - 2 pages.	It proves the rejection of letter by A-1 and his firm and the notice was sent.	11
22	155	Copy of paper publication of Demand Notice in daily "Dinamalar" and "Business Standard" on 22.02.2010 (original - 2 pages.)	To prove the SARFAESI Act action of the Bank of India.	14
23	156	IOM ZO:ARB:DN:732 dt. 04.12.2010 from Zonal Manager to Branch. (original - 21 page.)	To prove the SARFAESI Act action of the Bank of India.	3 & 11
24	157	Staff Accountability Report (SAR) No.CHN:SAR:LOTUS:2010-11:391 dt.06.12.2010 (original) - 6 pages.	To prove the assessment done by branch with regard to accountability of the staff of Bank of India.	3 & 11
25	158	Demand Promisory Note for Rs.3 Crores dt. 28.10.2006 (original) - 1 page.	To prove the CC limit enjoyed by M/s.Lotus Computers.	3 & 11
26	159	Undertaking dt. 28.10.2006 - 4 pages	To prove the CC limit enjoyed by M/s Lotus Computers.	3 & 11
27	160	Hypothecation of Tangible movable property dt. 28.10.2006 (original) - 14 pages.	To prove the CC limit enjoyed by M/s Lotus Computers.	3 & 11
28	161	Charge and hypothecation of book debts dt. 28.10.2006 (original) - 3 pages.	To prove the CC limit enjoyed by M/s Lotus Computers.	3 & 11

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Sl.No.	D.No.	Description of documents	Gist of documents	PWs
29	162	Hypothecation cum loan agreement (plant, machinery, stock and book debts) dt. 28.10.2006 (original) - 14 pages.	To prove the CC limit enjoyed by M/s.Lotus Computers.	3 &11
30	163	Deed of guarantee executed by Mrs.C.Kumudavalli dt. 28.10.2006 (original) -3 pages.	To prove the CC limit enjoyed by M/s.Lotus Computers.	3 & 11
31	164	Declaration dt. 28.10.2006 (original) -2 pages.	To prove the CC limit enjoyed by M/s.Lotus Computers.	3 & 11
32	165	Undertaking reg. Unsecured loan dt. 28.10.2006 (original) -1 page.	To prove the CC limit enjoyed by M/s.Lotus Computers.	13
33	166	Demand Promissory Note for Rs.50 lakhs dt. 03.12.2007 (original) -1 page.	To prove the CC limit enjoyed by M/s.Lotus Computers.	13
34	167	Undertaking dt. 03.12.2007 (original) 4 pages.	To prove the CC limit enjoyed by M/s.Lotus Computers.	13
35	168	Bearer letter dt. 03.12.2007 (original) -1 page.	To prove the CC limit enjoyed by M/s.Lotus Computers.	13
36	169	Supplementary deed of hypothecation dt. 03.12.2007 (original) -1 page.	To prove the CC limit enjoyed by M/s. Lotus Computers.	13
37	170	Supplementary deed of hypothecation dt. 03.12.2007 (original) -1 page.	To prove the CC limit enjoyed by M/s.Lotus Computers.	13
38	171	Deed of guarantee by Mrs.C.Kumudavalli dt. 03.12.2007(original) - 6 pages.	To prove the CC limit enjoyed by M/s.Lotus Computers.	11
39	172	Letter acknowledgement of Debt Securities dt. 13.10.2008 (original) -2 pages.	To prove the CC limit enjoyed by M/s.Lotus Computers.	11

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Sl.No.	D.No.	Description of documents	Gist of documents	PWs
40	173	Demand Promissory Note for Rs.70 lakhs dt. 28.03.2009 (original) -1 page.	To prove the CC limit enjoyed by M/s.Lotus Computers.	11
41	174	Undertaking 28.03.2009 (original) - 4 pages.	To prove the CC limit enjoyed by M/s.Lotus Computers.	11
42	175	Instalment letter dt. 28.03.2009 (original) -1 page.	To prove the CC limit enjoyed by M/s.Lotus Computers.	11
43	176	Supplementary deed of hypothecation dt. 28.03.2009 (original) -1 page.	To prove the CC limit enjoyed by M/s.Lotus Computers.	11
44	178	Deed of guarantee by Mrs.C.Kumudavalli dt. 28.03.2009 (original) - 6 pages.	To prove the CC limit enjoyed by M/s.Lotus Computers.	11
45	179	Letter of acknowledgement of Debt /Securities dt. 28.03.2009 (original) -2 pages.	To prove the CC limit enjoyed by M/s.Lotus Computers.	11
46	180	Request for disbursement dt. 28.03.2009 (original) - 1 page	To prove the CC limit enjoyed by M/s.Lotus Computers.	11
47	659	Standard and chartered Bank deposit slip dt. 06.11.2006 for Rs.2,92,500/- favouring to Shri V.Jayasri for depositing cheques No.886972 of IOB.	Proves the deposit of Rs.2,92,500/- favouring to Shri.V.Jayashrei	29
48	660	Standard and Chartered Bank deposit slip dt. 06.11.2006 for Rs.5,92,500/- favouring to Shri Venkata Ananda Raman for depositing cheques No.886974 of IOB.	`Proves the deposit of Rs.2,92,500/- favouring to Shri Venkata Ananda Raman	29
49	661	Letter dt. 15.11.2011 of AXIS Bank, Chennai addressed to CBI.		29

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Sl.No.	D.No.	Description of documents	Gist of documents	PWs
50	662	Original voucher pertaining tot he account of M/s.Blue Technologies RTGS transaction request from 08.11.2006 to ICICI Bank, Chennai for Rs.30,65,000/-/	Proves the transaction of Rs.30,65,000/- from the account of M/s.Blue Technologies to ICICI Bank, Chennai.	29
51	663	Original voucher pertaining to the account of M/s.Blue Technologies RTGS transaction request from 08.11.2006 to Indian Bank, Chindaduraipet Branch, Chennai for Rs.35,00,000/-.	Proves the transaction of Rs.35,00,000/- from the account of M/s.Blue Technologies to Indian Bank,Chindaduraipet Branch, Chennai.	29

He would further submit that the documents mentioned above are in respect of the transactions the other accused had with the bank and the present petitioner may not be prejudiced by marking the above documents. He would also contend that in respect of documents which overlaps on two witnesses the respondent would mark the document through one witness and examine the other witness for corroboration.

7. I have gone through the records and heard the submissions made by the counsels. The judgements relied on by the petitioner are not applicable to the facts on hand. In (2009) 2 SCC (Crl.) 455, it has been observed that the determinative factor for recalling a witness is whether it is essential to the just decision of the case. The documents sought to be marked by the respondent/complainant are not fresh documents, whereas they were filed along with the final report and the documents sought to be marked relates to transaction A1 and A2 had with the bank and that by marking these documents, no prejudice would be caused to the petitioner. Whereas, by non-marking of these documents as rightly stated by the learned Special Public Prosecutor for CBI Cases, it may lead to failure of justice since these documents are essential to arrive at just decision of this case. The trial Court had rightly allowed the petition in part and dismissed it in respect of other witnesses who are not necessary. In the above circumstances, the Criminal Original Petition filed by the petitioner is liable to be dismissed.

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8. Accordingly, this Criminal Original Petition is dismissed and consequently, the connected miscellaneous petitions are closed. The learned trial Judge/the Additional Chief Metropolitan Magistrate, Egmore, Chennai is directed to dispose of the case as expeditiously as possible preferably within a period of nine months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(Audit)

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Sub Assistant Registrar

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To:

1. The Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. The Additional Superintendent of Police
CBI/EOW/Chennai
Rc.No.ME1/2011/E/0001

3. The Special Public Prosecutor for CBI Cases.

+ 1 cc to Mr.N. Baskaran, Advocate Sr.57178

Crl.O.P.No.20174 of 2018

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