IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.09.2018

CORAM:

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

Crl.O.P.Nos.5586, 5587 and 5588 of 2017

Jagmohan Meena ..Petitioner in CrlOP. Nos.5586 & 5587 of 2017/Petitioner

Dharmi Meena ..Petitioner in CrlOP. No.5588 of 2017 /Petitioner

/Vs/

State, rep. By its
The Inspector of Police,
SPE/CBI/ACB/Chennai
RC No.18(A)/2010 ..Respondent in all the Crl.O.P's /Respondent

PRAYER in Crl.O.P.No.5586 of 2017 : Criminal Original Petition filed under section 482 of Cr.P.C., to call for the records relating to the case in C.C.No.39 of 2010 on the file of the learned XIV Additional Special Judge for CBI Cases, Chennai-600 104 and set aside the order passed in Crl.M.P.No.431 of 2016 on 26.10.2016 and consequently direct the Trial Court to permit the petitioner/petitioner/accused No.1 to examine the six additional defence witnesses as mentioned in the petition before the trial Court.

PRAYER in Crl.O.P.No.5587 of 2017 : Criminal Original Petition filed under section 482 of Cr.P.C., to call for the records relating to the case in C.C.No.39 of 2010 on the file of the learned XIV Additional Special Judge for CBI Cases, Chennai-600 104 and set aside the order passed in Crl.M.P.No.431/16 on 26.10.2016 and consequently direct the trial Court to permit Petitioner/Petitioner/Accused No.1 to examine the six additional defence witness as mentioned in the petition before the trial Court.

PRAYER in Crl.O.P.No.5588 of 2017 : Criminal Original Petition filed under section 482 of Cr.P.C., to call for the records relating to the case in C.C.No.39 of 2010 on the file of the learned XIV Additional Special Judge for CBI Cases, Chennai-600 104 and set aside the order passed in Crl.M.P.No.6888 of 2015 on 26.10.2016 and consequently direct the Respondent police to produce the documents mentioned in the petition before the trial Court.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

For Petitioner : Mr.G.Saravanan
(in all the Crl.O.P's)

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor
for CBI Cases
(in all the Crl.O.P's)

C O M M O N O R D E R

The Criminal Original Petition in Crl.O.P.No.5586 of 2017 has been filed by the petitioner/accused no.1 to set aside the order dated 26.10.2016 in Crl.M.P.No.431 of 2016 in C.C.No.39 of 2010 passed by the learned XIV Additional Special Judge for CBI Cases, Chennai-104 and to direct the trial Court to permit the petitioner/petitioner/accused No.1 to examine six additional defence witnesses as mentioned in the petition before the trial Court.

2. The Criminal Original Petition in Crl.O.P.No.5587 of 2017 has been filed by the petitioner/accused no.1 to set aside the order dated 26.10.2016 in Crl.M.P.No.6887 of 2015 in C.C.No.39 of 2010 passed by the learned XIV Additional Special Judge for CBI Cases, Chennai-104 and consequently direct the trial Court to summon the documents as prayed for in the petition from the custodian of documents as mentioned in the petition before the trial Court.

3. The Criminal Original Petition in Crl.O.P.No.5588 of 2017 has been filed by the petitioner/accused no.2 to set aside the order dated 26.10.2016 in Crl.M.P.No.6888 of 2015 in C.C.No.39 of 2010 passed by the learned XIV Additional Special Judge for CBI Cases, Chennai-104 and to direct the Respondent police to produce the documents mentioned in the petition before the trial Court.

4. The petitioner in Crl.O.P.Nos.5586 and 5587 of 2017 is arrayed as A1 and the petitioner in Crl.O.P.No.5588 of 2017 is arrayed as A2 in C.C.No.39 of 2010 pending on the file of the XIV Additional Special Judge for CBI Cases, Chennai-104. The petitioners along with other accused are charged for the offences under Sections 109, 467, 468, 471 of IPC and Sections 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988. Since all the petitions are arising out of the same calendar case, the common order is passed today.

Crl.O.P.No.5586 of 2017

5. The petition in Crl.M.P.No.431 of 2016 in C.C.No.39 of 2010 had been filed by the accused No.1 under Section 311 of Cr.P.C to examine certain witnesses as additional witnesses to substantiate and strengthen the defence case. The witnesses who are called for are

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

i) The Chief Accounts Officer, Custom House, Rajaji Salai, Chennai-1 to speak about the salary details of the petitioner for September and October 2018.

ii)The Secretary, Krishi Upaj Mandi Samiti, Bayana Town and Taluk, District Karauli, Rajasthan to speak about RTI Reply No.656 dated 20.08.2015.

iii)The Secretary, Krishi Upaj Mandi Samiti, Hindaun Town and Taluk, District – Karauli, Rajasthan to speak about RTI Reply No.901 dated 12.08.2015.

iv) The Assistant Engineer, (Jaipuir Vidut Vitaran Nigam Ltd.), Sub-Division: Todambhim, Taluka- Todabhim, Karauli District, Rajasthan to speak about the Agricultural Electricity connection in the name of Shri Dharmi Meena.

v) The Financial Advisor and Chief Accounts Officer, Ranjit Sagar Dam Project, Shapur Kandi Township, Tehsil-Pathankot, Gurudaspur, Punjab State, to speak about the salary details of Shri.Jagmohan Menna while working as Divisional Accountant for the period from August 2002 to March 2005.

vi) Shri.Veerendra Menna, Patawari In Charge of Village _ Khohara, O/O. Techsildar, Tehsil: Todabhim, Karauli District, Rajasthan State to speak about 1) Girdawari Reports with regard to farm lands of DW4 and DW6 and 2) to speak about the Average crop production per bigas in Khohara Village during the check period.

6. The respondent had filed a counter objecting the same stating that the case was registered against the first accused Jagmohan Meena and after completion of investigation, charge sheet has been filed and that the check period had been fixed from November 2007 to November 2009 and therefore, the other income received by the first accused was not relevant for the case and further, the Accounts Officer had already been examined and cross examined by the petitioner and that the relevant documents from Krishi Upaj Mandi was produced and relevant witnesses were examined and the petitioner had also cross examined them and that the petition had been filed to delay the trial.

7. The learned Judge taking into consideration had dismissed the petition in Crl.M.P.No.431 of 2016 stating that the petitioner had been examined under Section 313 (1)(b) of Cr.P.C way-back on 19.09.2014 and that he was expected to file the list of defence witnesses even on the date when he was examined under Section 313(1)(b) of Cr.P.C. The learned Judge had deprecated stating that the first accused had filed a list of 21 witnesses only on 20.10.2014 and not on the date of questioning. Further, out of 21 witnesses mentioned in the said list, the petitioner had chosen to examine only 12 witnesses and that he had dispensed with the examination of

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

the remaining 9 witnesses. Now, after later point of time, the petitioner/accused No.1 had proposed to examine 6 more witnesses and that the witnesses called for were called to be examined as witnesses for the purpose of proving the income during the period 2002 to 2005. The learned Judge holding that the accused who is expected to have formulated his defence even at the time of the inception of trial had filed the list of new defence witnesses only after two years of commencement of the defence. Further, the learned trial Judge has also held that the petitioner/accused No.1 had not made out the case that they are very essential for just decision of the case as provided under the 2nd Part of 311 of Cr.P.C. Further, the trial Judge has held that PW2 had been examined to prove the income of the accused through salary and if the accused had proposed to prove his income through overtime work, he should have summoned the documents relating to his overtime work and he should have confronted PW2 about the omission to include the overtime payment in his income and hold that having omitted to do so, the petitioner cannot at this belated stage project a new defence that he had earned overtime payments and thereby, dismissed the petition in Crl.M.P.No.431 of 2016.

Crl.O.P.No.5587 of 2017

8. The petition in Crl.M.P.No.6887 of 2015 in C.C.No.39 of 2010 had been filed by the petitioner/accused No.1 under Section 91 of Cr.P.C to produce the records which were in the custody of the Superintendent of Custom, The Preventive General Unit/Section, Custom House, Chennai-1. The details pertaining to the documents are that while PW2 was cross examined, the witness did not have any details from 10.08.2007 to 12.01.2009 during which period the petitioner worked on overtime basis and that those particulars were not reflected in Ex.P4, the salary details of the petitioner. The petitioner had stated that PW15 had admitted the receipt of overtime payments by the petitioner/accused No.1 herein, thereby the petitioner had sought to call for the documents relating to his over time payments.

9. The respondent had filed a counter stating that the trial of the case is in the final stage and that the petitioner was already granted permission to produce his defence witnesses and that he had produced 12 defence witnesses during the course of trial at certain intervals and the Court had also allowed him to examine all of them and that the present petition had been filed at a belated stage to protract the trial.

10. The learned Judge had held that when PW2 was examined she had given her answer in negative to a question whether she brought the overtime details for the period from 10.08.2017 to 12.01.2009. The learned Judge had held that it cannot be equated to an admission that the petitioner had

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

worked overtime during that period and thereby holding that the petitioner cannot now take advantage of that answer to summon certain documents relating to his overtime work and dismissed the petition. The learned Judge has also held that the petitioner, at a belated stage, cannot project a new defence that he had earned overtime payments and dismissed the petition. Further, the learned Judge has also held that PW15 is not a competent person to speak about the overtime payments earned by the petitioner and thereby had dismissed the petition.

Crl.O.P.No.5588 of 2017

11. The petition in Crl.M.P.No.6888 of 2015 had been filed by the petitioner/accused No.2 under Section 91 of Cr.P.C to produce the documents as serialized No.2, 3, and 4 in Ex.P18/D-63 marked through PW4. In Crl.M.P.No.6888 of 2015, the grounds raised by the petitioner was that it is on record that the Investigating Officer Sri.K.Madhusudhan had received four documents under a Receipt Memo dated 07.09.2018 which is marked as Ex.P18 (D-63) and that the Investigating Officer had out of the three documents mentioned had produced only one document which had been marked as Ex.P15 and Ex.P16 and that the rest of the documents were neither produced before the court and not cited as prosecution document by the respondent and the Investigating Officer had suppressed them for the reasons known to him and the petitioner had submitted that Ex.P18 speaks volume of the defence case and that is the reason why it has been suppressed. The learned trial Judge taking into consideration the common counter had dismissed the petition stating that the receipt memo has been marked as Ex.P18 through PW4 and that the perusal of Ex.P18 (receipt memo) indicates that the Investigating Officer had collected the following 4 documents from the Zonal Officer of the LIC of India, Mount Road, Chennai.

1) Status Report and Premium paid history of LIC Policy No.194613239 opened on 28.02.2004 in the name of Jagmohan Meena, S/o.Dharmi Meena, VPO Kohara, the Todabhim Dist Karouli Rajasthan.

2) Status Report and Premium paid history of LIC Policy No.190880974 opened on 28.03.1994 in the name of Shri Meena S/o. Rati Ram Meena, VPO Hohara, Tech Todabhim.

3) Status Report and Premium paid history of LIC policy No.190880975 opened on 28.03.1994 in the name of Smt.Tijo Devi Meena W/o.Dharmi Meena, VPO Hohara, the Todabhim.

4) Copy of letter issued by Manager ( P & IR) Jaipur and copy of letter issued by the Branch Manager, LIC, Hindon.

The learned trial Judge has held that though it is a common practice that several documents are collected during

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

investigation, it is the prerogative of the prosecution to choose the documents on which the case has to be founded, while shaping the charge sheet and that the trial Judge has held that the petitioner had not elaborated as to how the other three documents which were stated to be left out or very vital for proving his defence and if the petitioner had proposed to project a defence that these documents are very essential for his defence, he has to summon the documents even during the examination of PW4 and confronted him with these documents during his cross examination and thereby had dismissed the petition.

12. Now, these three Criminal Original Petitions are filed challenging the dismissal of the above three applications.

13. The learned counsel for the petitioner would submit that the petitioner has to elicit his defence by summoning the witnesses to prove his case. In respect of application in Crl.M.P.No.431 of 2016, he would submit that the witnesses are essential to prove that he had worked overtime and that the overtime income had to be taken into consideration. In respect of Crl.M.P.No.6887 of 2015, he would submit that overtime records are available with the Superintendent of Custom and that they have to be called for. Further, in respect of Crl.M.P.No.6888 of 2015, the learned counsel for the petitioner would submit that the documents mentioned in Ex.P18 are details relating to the LIC policies taken in the name of the first accused, second accused and the mother of the first accused. He would further submit that the maturity value received by the petitioners have not been taken into consideration and thereby, those documents are essential.

14. The learned Special Public Prosecutor for CBI Cases objecting to the submissions made by the learned counsel for the petitioners would submit that though the trial Court had directed the petitioner to examine 21 witnesses, he examined only 12 witnesses and failed to examine 9 witnesses elicited in the list of defence witnesses. He would further submit that the list of further 6 witnesses were sought to be recalled and examined at a much belated stage and the learned trial Judge holding that it is only a dilatory tactics had dismissed the application. Further, the learned Judge has also held that the petitioner had not made out a case to prove that the witnesses are essential for decision of the case and thereby dismissed it. In respect of Crl.M.P.No.6888 of 2015, the learned Special Public Prosecutor would submit that the Investigating Officer had not suppressed any details and the details regarding all the policies of the petitioner have been mentioned in Ex.P18. He would submit that the petitioner having failed to exercise his right then and there has filed these petitions much belatedly and the intention of the petitioner is only to delay the trial. He would further

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

submit that the petitioners have not examined themselves in defence and that the details of overtime payment received by the petitioner/1st accused being within his knowledge, he has got an opportunity even now to produce the details regarding over time income at the time of examining himself as a defence witness. He would further submit that the respondent has not suppressed any details and that in Ex.P18, the details regarding the matured L.I.C policies have been stated and that the petitioners can let in evidence regarding the same during the time of examining themselves as defence witnesses subject to verification of documents.

15. This Court had in order to verify the contents in Ex.P18, had earlier with the consent of both side counsels called for original records from the trial Court. Ex.P18 reveals about all the insurance policies referred to by the petitioner/accused. As rightly pointed out by the Special Public Prosecutor, the details sought for by the petitioners/accused are within their knowledge and that as per Ex.P18, the details regarding all the insurance policies have been stated. The 1st petitioner is also an income tax assessee and he would have disclosed about his income in his returns. The petitioners/accused have the right of examining themselves as witnesses and they can let in evidence to prove their defence as claimed by them by marking documents as defence documents.

16. The learned counsel for the petitioners would submit that when an application under Section 91 of the Code is filed, the trial Court should not conduct a roving and fishing inquiry and the necessity and desirability would have to be seen by the court in the context of the purpose and that the petitioners in order to defend their case have to take every endeavour to prove their case and that the petitioners have only taken earnest steps, whereas the trial Court has given a wrong finding that the petitioners have filed the petitions to protract the trial.

17. I have consciously gone through the materials on record and heard the submissions of both counsels.

18. The trial Court had given the finding only in the context of the purpose for which the petition has been filed and had also given proper reasoning for dismissing the applications. As pointed out by the learned Special Public Prosecutor, the opportunity of letting in evidence by way of defence evidence by examining the petitioners themselves as witnesses and marking defence documents is still available. The details regarding overtime payments and details regarding matured insurance policies are well within the knowledge of the petitioners and subject to verification of documents, the petitioners can let in evidence and mark those documents by way of defence evidence/documents. This Court finds no

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

infirmity in the Orders of the Court below and thereby, the orders need no interference.

19. In view of the above, these three Criminal Original Petitions stand dismissed.

uma

Sd/-
Assistant Registrar(CS-CCC)

// True Copy//

Sub Assistant Registrar

To:

1. The XIV Additional Special Judge for CBI Cases,
   Chennai-600 104.

2. The Special Public Prosecutor for CBI Cases,
   High Court of Madras, Chennai-104.

3. The Inspector of Police, SPE/CBI/ACB/Chennai.

4. The Section Officer, Crl. Sec. High Court, Mds.

+ 1 cc to Mr.G.Saravanan, Advocate Sr 64447

KR/10/10/18

Crl.O.P.Nos.5586, 5587 and 5588 of 2017

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/