



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.03.2018

Pronounced on: 16.03.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Original Petition No.7520 of 2018

1. A.SenthilKumar
2. K.Ravichandran
3. T.Ashokan
4. R.Purushothaman
5. C.Gunasekaran

...Petitioners 1 to 5
Accused 6 to 10

/versus/

The Inspector of Police,
CBI, SCB, Chennai
FIR No.RC06(S)/10.

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.8 of 2011 on the file of the learned II Additional Sessions Judge-Special Judge for CBI Cases, Coimbatore and set aside the order dated 28.09.2017 passed in CrI.M.P.No.2291 of 2017 and direct the learned Judge to recall Pws 16,17,27 and 28 for cross examination by the petitioners as provided under Section 311 of the Criminal Procedure Code.

For Petitioners : Mr.H.Rajasekar

For Respondent : Mr. K.Srinivasan,
Special Public Prosecutor (CBI)

O R D E R

The petitioners herein are the accused 6 to 10 in C.C.No.8 of 2011 on the file of the learned II Additional Sessions Judge-Special Judge for CBI cases, Coimbatore.

2. It is contended that the petitioners along with the accused are facing charges for offence under Section 420, 467, 468, 471 & 472 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. During the course of trial, the petitioners herein had adopted cross examination along with the other accused in respect of PWs.16, 17 and 27. Presently the matter was posted for questioning under Section 313 of Cr.P.C. Now it is found that some questions ought to have been put to

these witnesses on behalf of the petitioners to bring out their defence. Hence, though application under Section 311 Cr.P.C praying to recall PWs. 16, 17, 27 and 28 was filed. The Trial Court has dismissed the application. Hence, the present petition under Section 482 of Cr.P.C is filed by the petitioners.

3. Heard the learned counsel for the petitioners and perused the petition. The Trial Court has dismissed the petition filed under Section 311 of Cr.P.C on the ground that PW.16 [Tamilselvan] was examined on 30.01.2015, PW.17 [Suresh Kumar] was examined on 03.02.2015, PW.27 [Arul Selvi] was examined on 26.01.2015 and PW.28 was examined on 27.03.2015. The accused/A1 to A4 have filed petition to recall the witnesses and same was allowed and the opportunity given for cross examination of PWs. 16, 17 and 27 was availed by the accused/A1 to A4. At that time, these petitioners, who were arrayed as accused 6 to 10 had stated that the cross examination by A1 to A4 is adopted by them. Thus, having afforded an opportunity to cross examine PWs. 16, 17 and 27 and the same been availed by the accused persons and adopted the cross examination done on behalf of the accused A1 to A4, there is no necessity, again to afford an opportunity to cross examine these witnesses.

4. Likewise, PW.28 [Suseela], who is the wife of the 5th petitioner herein, was also recalled and examined by A1 to A4. The Learned counsel appearing for the petitioners herein in the Trial Court had informed that there is no cross on their behalf. Thus the petitioners, who have been afforded opportunity to cross examine these witnesses, and the witnesses though recalled for the said purpose earlier and they have not cross examined, now they cannot claim further opportunity to recall these witnesses again to cross examine.

5. The learned Counsel for the respondent herein submitted that examination of prosecution witnesses is over and the case is posted for questioning the accused about the incriminating evidence against them. At this juncture the petition to recall witnesses whose examination was done three years back is only to protect the trial and cause delay. Since these witnesses were once recalled for facilitating the accused to cross examine them, this petition to recall them again is with an ulterior intention.

6. It is trite Principle of law when the witnesses are present, it is the duty of the accused to cross examine the witnesses. In this case, the witnesses were present and an opportunity was given to the petitioners herein to cross examine them. They have availed that opportunity by adopting the cross examination done by the co-accused. While, an opportunity to examine the witnesses was extended to the petitioners herein by recalling the witnesses on earlier occasion, the petitioners have not examined the witnesses but had adopted the cross examination of the Co-accused. Now after lapse of three years,

the application is filed at the fag end of the Trial, which has given an impression to the Trial Court that this attempt is to protract the proceedings.

7. The learned Counsel appearing for the petitioners would submit that he is ready to pay cost for the witnesses and cross examine them on the same day. Though in normal circumstances, the court may think it fit, to acceded this request, off late it has become routine for the accused persons to file a petition for recalling witnesses at the fag end of the Trial, after lapse of several years, so as to take advantage of their lapse of memory or to gain over the witness to turn hostile. Innocuous request like this later leads to miscarriage of justice instead of enhancing the spirit of justice.

8. In the view of this Court, the conduct of the petitioners is certainly to delay the process and the observation made by the Trial Court based on the record cannot be faulted with. For the above said reason, the Criminal Original Petition is dismissed.

-sd/-
Assistant Registrar

True Copy

Sub-Assistant Registrar

bsm

To

1. The II Additional Sessions Judge-Special Judge,
CBI Cases, Coimbatore.

2. The Inspector of Police,
CBI, SCB, Chennai.

3. The Special Public Prosecutor, (CBI)
High Court, Madras.

+1 C.C. to MR.H.Rajasekar Advocate SR.NO. 20134

Pre-delivery judgment made in
Criminal Original Petition No.7520 of 2018

SS (CO)

VS 28.03.2018

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