

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.19142 of 2018

1.D.Pandiraj
2.Anithra Pandiaraj

Petitioners

Vs.

State Rep. by
The Inspector of Police
SPE / CBI /ACB
III Floor, Shasthiri Bhawan
Haddows Road, Nungambakkam
Chennai 600 006
R.C.No.35 & 36 (A) / 2005

... Respondent

PRAYER:Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records in Crl.M.P.No.619 of 2018 in C.C.No.6 of 2006 and to set aside the order passed by the learned Special Judge for CBI Cases-II, Additional District Court, Coimbatore and to permit to summon PW6, PW39 and PW40 for cross examination.

For Petitioners : Mr.A.V.Somasundaram

For Respondent : Mr.K.Srinivasan
Spl.P.P. (CBI Cases)

O R D E R

This petition has been filed under Section 482 of Criminal Procedure Code to call for the records in Crl.M.P.No.619 of 2018 in C.C.No.6 of 2006 and to set aside the order passed by the learned Special Judge for CBI Cases-II, Additional District Court, Coimbatore and to permit to summon PW6, PW39 and PW40 for cross examination..

2.The petitioners are A2 & A3 and they are facing trial before the learned Special Judge for CBI Cases & II Additional District Court No.II, Coimbatore in C.C.No.6 of 2006 for the offences punishable under Section 120B, IPC r/w.420, 467, 468 & 471 IPC along with nine other accused. After completion of prosecution evidence, the case was posted for defence evidence.

3.The petitioners filed a petition under Section 311 of Cr.P.C. praying for the recall of PW6 (Abdul Wahab), PW39 (Govindasamy) and PW40 (Ravi) for the purpose of cross examination on the ground that the petitioners have secured the documents only recently from the Debts Recovery Tribunal, Coimbatore to establish their defence to the effect that the availing of loans by the petitioners are purely a civil transaction. The said Petition in CrI.M.P.No.619 of 2016 was taken on record, after filing the counter, the said petition was dismissed by the learned Special Judge for CBI Cases - II Additional District Court, Coimbatore, against which, the present petition has been filed under Section 482 of Cr.P.C.,

4.The learned counsel for the petitioners would submit that though the petitioners have filed the petition before the Trial Court with the same prayer, the petition was allowed in respect of PW6. Though, the Trial Court allowed the petition under Section 311 of Cr.P.C., the petitioners were not able to trace out the address of PW6 thereby not able to cross examine PW6 at the relevant point of time.

5.In respect of other witnesses i.e. PW39 & PW40, the cross examination had already been completed. Since the petitioners have secured the certified copies of documents recently from the Debts Recovery Tribunal, Coimbatore, the petitioners wanted to mark the documents and to confront PW39 and PW40.

6.The learned Special Public Prosecutor would submit that there is no genuine reasons to entertain this Petition. The opportunity of cross examination of the above witnesses was available to the petitioners much before and due to the lapse and wilful negligence, the petitioners have come up with the present petition of such a nature so as to delay the trial.

7.The learned Special Public Prosecutor would further submit that the petition has been filed now after a lapse of 10 long years to further cross examine PW6, PW39 and PW40 with regard to those documents that have been secured from the Debt Recovery Tribunal, which is unnecessary. Even, if the petitioners want to rely upon the documents secured by them from Debt Recovery Tribunal, they can very well mark the documents through the defence witness.

8.Considering the facts and circumstances that the petitioners have filed the similar petition before the Trial Court to recall PW6, the said petition was allowed by the Trial Court, but the petitioners have not taken any steps to cross

examine PW6 and once again after a lapse of one decade, the petitioners have filed a petition under Section 311 of Cr.P.C. to cross examine PW6, which is unsustainable one and further for the purpose of cross examining PW39 and PW40, if they want to confront those documents they can very well do that through the defence witness. Hence, this Court did not find any error or infirmity in the order passed by the learned Special Judge for CBI Cases - II Additional District Court, Coimbatore in CrI.M.P.619 of 2018 in C.C.No.6 of 2006.

9.Accordingly, this Criminal Original Petition stands dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To.

1.The Special Judge for CBI Cases-II
Additional District Court, Coimbatore

2.The Inspector of Police
SPE / CBI /ACB
III Floor, Shasthiri Bhawan
Haddows Road, Nungambakkam
Chennai 600 006
R.C.No.35 & 36 (A) / 2005

3.The Special Public Prosecutor for CBI Cases
High Court of Madras

+2cc to Mr.A.V.Somasundaram, Advocate sr.no.86941

CrI.O.P.No.19142 of 2018

mp(co)
nr 09/01/2019