

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.06.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.16359 of 2018

Ananthakrishnan

... Petitioner

Vs.

1 State rep.by its
The Inspector of Police,
CBI, ACB, Chennai.

2 R.Marimuthu ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to direct the learned XI Additional City Civil Court for CBI Bank Fraud Cases at Singaravelan Maligai to set aside the order in Crl.M.P.No.2322 of 2018 dated 20.06.2018 and totally dispensed with the appearance of the D.W.No.10 in C.C.No.08 of 2002.

For Petitioner : Mr.P.Kumaresan

For Respondent-1: Mr. K.Srinivasan
Special Public Prosecutor for CBI

ORDER

This Criminal Original Petition is filed by one Ananthakrishnan on behalf of one Mr.Devarajan, who had been summoned by the Special Court for CBI at Chennai to appear and give evidence. This witness summon has been issued at the instance of A8 in C.C.No.08 of 2002.

2 This case has checkered history wherein for the FIR filed in the month of October 1996, the prosecution has filed final report on completion of investigation in the month of March 2002 and after 15 long years, the prosecution has completed by examining 65 witnesses. After questioning the accused, 14 in number the incriminating materials available on record. During the month of February 2018, the defence has started the process of examining defence witnesses.

3 One Mr. Marimuthu is arrayed as 8th accused, had

furnished a list of 28 witnesses were to be examined on his behalf. The time fixed for examining the witnesses was not adequate for the said accused hence, he approached this Court for extension of time and this Court in Crl.R.C.No.609 of 2018 dated 30.05.2018 had extended the time to complete the examining the defence witnesses till 29.06.2018. Mr.Devarajan is one of the person who has been summoned to give his evidence on behalf of the defence. On receipt of the summon on his behalf Mr.Ananthakrishnan, who is the petitioner herein had filed a petition stating that Devarajan suffers from Parkinson disease and memory loss. He is not in a position to appear before this Court and depose and to avoid unnecessarily harassment, his appearance before the Court should be dispensed.

4 The trial Court did not consider his request as a genuine one in the light of the objection made by the 8th accused, whose instance Devarajan was summoned. Hence, the present Criminal Original Petition is filed before this Court seeking indulgence to dispense with the appearance of Mr. Devarajan before the trial Court for examination.

5 Heard the learned counsel for the petitioner, the learned counsel representing for the second respondent/8th accused and the learned Special Public Prosecutor.

6 Mr. Ananthakrishnan, who has filed the application on behalf of Devarajan was asked to present before this Court and file an affidavit under what capacity he had approached the Court on behalf of Devarajan. Relying upon the medical documents of Devarajan, Mr.Ananthakrishnan has sworn his affidavit that he is the person taking care of him along with his relative and driver and due to Parkinson disease, Devarajan is unable to walk and perform his regular activities without assistance. In the affidavit, it is stated that since 2007, Devarajan suffering from Parkinson disease and his condition is worsening. In the year 2017, he is under constant check up and having memory impairment.

7 Per contra, the learned counsel appearing for the second respondent/8th accused would submit that Devarajan is actively participated in the day to day affairs of the management of Chennai Public School.

8 According to the learned Special Public Prosecutor, the person who has been summoned by the Court even if he suffers from any ailment and express his difficulty or seek for other remedy available under the law.

9 Here, it is the case of some third party claiming to be the care taker of Mr. Devarajan had filed petition and

affidavit along with medical certificate, which has to be tested both genuine and legality of the request made in the petition. Whenever the person is summoned by a Court to appear and depose about the facts known to him in connection with the case under trial, he cannot refuse appearance. He can place before the Court his difficulty for appearance in person for the day he is supposed to appear totally shying away from summon is not possible. Examination of witnesses can be either done by the Court on his personal appearance or through Advocate Commissioner. Peculiarly in this case, a third person does not want Devarajan to appear before the Court to give his deposition. This attempt by a third person makes the case very murky and suspicious. In response to the summon, on his appearance if the trial Court is of the opinion that the witnesses not capable of giving evidence, it is always open to the Court to take appropriate decision whether to dispense the witnesses present.

10 Therefore, this Court directs the trial Court to issue fresh summon to Mr. Devarajan for his appearance on 29.06.2018. On his appearance if the Court feels that the witness is incapable of giving statement, then the same may be recorded and the proceedings may be closed. The second respondent/8th accused shall not thereafter insist for the appearance of this witness. The learned counsel appearing for the respective parties present before this Court and the order is dictated in the open Court, so that they can convey the order to the clients and act in accordance with the order passed by this Court.

11 With the above direction, this Criminal Original petition is disposed of.

Sd/-

Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

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To

1 The Inspector of Police,
CBI, ACB, Chennai.

2.The XI Additional City Civil Court,
CBI Bank, Fruad Cases, Chennai.

3 The Special Public Prosecutor for CBI,
High Court, Madras.

+lcc to Mr.P.Kumaresan, Advocate SR.No.40640

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KS (CO)
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