

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.07.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.17360 of 2018

- 1 M/s.Stepstone Promoters Pvt.Ltd,
Rep.by its Managing Director,
K.Mothish Kumar
- 2 K.Mothish Kumar ..Petitioners/Accused A10 & A11

Vs.

- 1 The Inspector of Police,
Central Bureau of Investigation,
ACB 3rd Floor, Shastri Bhavan,
Chennai 600 006. ..Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order passed in Crl.M.P.No.2046 of 2018 in C.C.No.37 of 2017 on the file of the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai.

For Petitioners: Mr.S.Kamalakannan

For Respondent : Mr. K.Srinivasan
Special Public Prosecutor

ORDER

M/s.Stepstone Promoters Private Limited and Mothish Kumar shown as A10 and A11 in C.C.No.37 of 2017 on the file of the Principal Special Court for CBI Cases at Chennai. The case investigated by CBI in Cr. No.RC(A) 37 of 2016 are the petitioners before this Court.

2 The second petitioner Mothish Kumar has sworn an affidavit to the effect that when he approached this Court to quash the charges in CC.No.37 of 2017 with respect to RC(A) 37 of 2016. The prosecution proceedings filed before the Court shows that there is an application filed by them to grant leave to conduct further investigation and the same is pending before the trial Court. Therefore, quash petition has to be dismissed. Recording the same, this Court dismissed the quash petition. Subsequently, the application filed by the prosecution under Section 173 (8) of Cr.P.C., was taken up for consideration by the trial Court. The trial Court has allowed

the application to conduct further investigation. Now under the guise of further Investigation, the prosecution is trying to re-investigate the case, which is not permissible under law. Therefore, seeks indulgence of this Court to set aside the order of the trial Court passed in Crl.M.P.No.2046 of 2018.

3 Heard the learned counsel for the petitioner and the learned Special Public Prosecutor.

4 The petition filed by the prosecution before the trial Court seeking further investigation reads as under:-

"6 It is further submitted that even though oral evidences are available to prove the writings and signatures of the accused persons viz. Shri V.Velmurugan, Shri G.Ayyappan on one of the seized documents viz. A file captioned as "EMC HR Solutions" Marketing Daily Work Progress, on 24.06.2017 Specimen signatures in five separate sheets were voluntarily given by Shri V.Velmurugan in the presence of witness. Similarly specimen signatures in five separate sheets were voluntarily given by Shri G.Ayyappan on 28.06.2017 in the presence witness. On the basis of specimen signatures of Shri V.Velmurugan and Shri G.Ayyappan, the above said original file (EMC HR Solutions Marketing Daily Work Progress) and the specimen signatures and the questionnaire were sent to the Director, Central Forensic Science Laboratory (CFSL), Hyderabad-500 013, Telangana, requesting for expert opinion on the specimen signatures of Shri G.Ayyappan and Shri V.Velmurugan.

7 It is further submitted that the Director, CFSL, Hyderabad vide his reply letter No.CFSL(H)/1196/Doc/600/CH-152/2017/930 dated 13.02.2018, asking the prosecution to obtain a few more signatures of the accused persons viz. Shri V.Velmurugan and Shri G.Ayyappan in order to enable the Expert to offer opinion on the signatures of the accused persons in the said seized document."

Considering this, the trial Court has permitted the prosecution to conduct further investigation and file additional final report.

5 The learned counsel for the petitioner by producing photo copy of three notices issued by the respondent-police under Section 160 Cr.P.C., to Shri N.Puvimaran, Shri R.Selvam and Shri J.Sathish Kumar, who are all employees of the first petitioner Company, would submit that by issuing these notices to the employees of the first petitioner's company, the prosecution is trying to re-investigate the case.

6 This Court finds no merit in the submission made by the petitioner in this petition, for the simple reason that the prayer in the petition filed by the respondent before the trial Court clearly indicates that after filing final report of the investigation, it is now found that the hand writing expert is unable to give his opinion due to insufficient specimen signature of the accused persons. Hence, asked the Investigating Officer to obtain few more specimen signature, therefore, they sought leave of the trial Court to conduct further investigation. In the course of their further investigation, the respondent had thought it fit to summon the persons acquittance with the facts of the case.

7 This exercise of the Investigating Officer squarely falls within the scope of further investigation and by no stretch it could be termed as re-investigation as contended by the petitioners. The difference between further investigation and Re-investigation is well explained in the ISRO Espionage case the Hon'ble Supreme Court in K.Chandrasekar Vs. State of Kerala reported in AIR 1998 SC 2001 later followed in Vinay Tyagi Vs. Irshad Ali and another reported in 2013 (5) SCC 762. In Vinay Tyagi case cited supra, the Hon'ble Supreme Court say,

"15. 'Further Investigation' is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173. This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a 'further investigation'. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report'. 'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation."

Therefore, the petitioners herein have no locus standi to interfere with the process of further investigation. The

person who is arrayed as accused in the crime cannot dictate the investigation agency whom to enquire and how to investigate. Even Courts cannot interfere with the investigation, but only monitor the investigation if necessary. While so, the intention of the petitioners herein clearly indicates that they are scared of further investigation hence desired to put spokes in the investigation by filing this petition.

8 For the aforesaid reasons, this Criminal Original Petition is dismissed as devoid of merits.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Inspector of Police,
Central Bureau of Investigation, ACB
3rd Floor, Shastri Bhavan,
Chennai 600 006
Fort St.George,
Chennai-600 009.
- 2 The Special Public Prosecutor for CBI Cases,
High Court, Madras.

+ 1 cc to Mr.K. Jayasudha, Advocate Sr.44267

CrI.O.P.No.17360 of 2018

VGII (CO)
EU (23/07/2018)

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