



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2018

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Cr1.O.P. (MD) No.15182 of 2018

State represented by
the Inspector of Police,
CBI, ACB,
Chennai.

... Petitioner

Vs.

1.K.P.Kumar @ K.P.Veera Kumar

2.Dr.C.R.Subramanian

3.Dr.S.Jala Jawahar

4.Dr.K.Rajavelu

5.S.Shanmugavel

6.T.Ziavudeen

7.Dr.B.Banumathi

8.Dr.M.Sundararajan

... Respondents

PRAYER: The Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to examine the correctness legality or propriety of the findings made in the impugned order dated 10.05.2018 of the II Additional District Court for CBI Cases, Madurai and set aside the same.

For Petitioner : Mr.N.Nagendran
Special Public Prosecutor

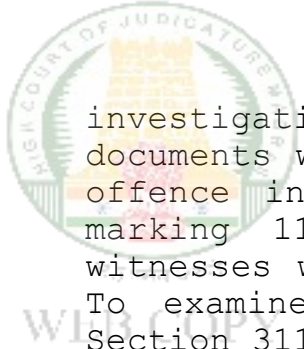
ORDER

This petition has been filed to set aside the impugned order dated 10.05.2018 on the file of the II Additional District Court for CBI Cases, Madurai.

2.Heard the learned counsel representing CBI.

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

3.A case was registered against K.P.Kumar @ K.P.Veera Kumar and 10 others by CBI in R.C.No.19(A)/2008. After completion of



investigation, final report along with list of witnesses and list of documents was filed and the trial Court has taken cognizance of the offence in C.C.No.3 of 2009. After examining 23 witnesses and marking 119 exhibits, the prosecution has realized that five witnesses were omitted to be cited as witness in the final report. To examine them as prosecution witnesses, an application under Section 311 Cr.P.C., has been filed.

4.The trial Court, after considering the contention found in the petition and the objection raised by the defense, has dismissed the petition, recording the fact that the case registered on 18.04.2008 and taken on file on 03.08.2009, examination of witnesses started on 27.06.2017. Except investigation officers, all other listed witnesses have been examined. At this stage, the prosecution has filed an application to summon new witnesses, who were not examined by the investigation officer and record their statement during investigation.

5.In such circumstances, the Court below has observed that if the prosecution is permitted to introduce new witnesses, the line of cross examination made by the accused may change. The attempt of the prosecution is only to fill up the lacuna. Court cannot sail with the prosecution. Section 311 Cr.P.C., cannot be used to fill up the lacuna.

6.This Court finds no error in the order of the Court below. The Investigation Officers, who have investigated the bank fraud, if had failed to record the statement of any witness and filed a final report, such lapse cannot be allowed to be filled up after a lapse of 10 years, in the midst of the trial, taking the accused persons to surprise.

7.Hence, this criminal original petition is dismissed. The Court cannot permit to fill up the lacuna or adduce new evidence at the end of the trial which are detriment to the accused persons.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-IV)

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To

1.The II Additional District Court for CBI Cases,
Madurai.



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

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.O.P. (MD) No.15182 of 2018

NM/SV/SAR 4/26.09.2018/3P/4C