

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Petition No.7904 of 2013

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the Central Bureau of Investigation, challenging the order, dated 08.07.2013, passed in CrI.M.P.No.560 of 2013 in C.C.No.3 of 2005, by the I Additional Special Judge for CBI Cases, Visakhapatnam, whereby, the petition filed by the prosecution to receive the document, i.e., order passed by the Superintendent of Police, CBI, Visakhapatnam, under Section 17 of the Prevention of Corruption Act, 1988, permitting V.K.C.Reddy, the then Deputy Superintendent of Police, CBI, Visakhapatnam, to investigate the case, was dismissed.

2. Heard the submissions of the learned Special Public Prosecutor for CBI Cases representing the petitioner, the learned counsel for the respondent/accused and perused the record.

3. The learned Special Public Prosecutor for CBI cases would contend that the Court below ought not have dismissed the subject application. The order of authorisation of V.K.C.Reddy, the then Deputy Superintendent of Police, CBI, Visakhapatnam, is relevant and material for a just decision in the case and it will go to the root of the matter and would prejudice the rights and interests of the prosecution, if not received. The court below erred in coming to the conclusion that the relief sought the subject application would amount to modification of the order,

dated 11.03.2008, passed in CrI.M.P.No.26 of 2008 and as such, it is under the provisions of Section 362 of Cr.P.C. CrI.M.P.No.26 of 2008 was dismissed by the Court below on the ground that the prosecution had not disclosed proper reason for not filing the copy of the authorisation to conduct investigation, but not on merits. Since the order passed in CrI.M.P.No.26 of 2008 was not on merits, Section 362 of Cr.P.C., has no application. The subject application was filed under Section 173(2)(5)(a) of Cr.P.C., whereas, CrI.M.P.No.26 of 2008 was filed under Section 242 of Cr.P.C. Since both the provisions are different and are procedural in nature, Section 362 of Cr.P.C. would not come into operation. Even otherwise, the document sought to be received is a vital document, in the absence of which, the entire case of the prosecution would be prejudiced and ultimately prayed to set aside the impugned order.

4. On the other hand, the learned counsel for the respondent/accused would contend that the Court below had elaborately dealt with the contentions now raised by the learned Special Public Prosecutor for CBI Cases in the subject application and ultimately dismissed the same, holding that a second petition seeking the same relief sought in an earlier petition which was dismissed, is not maintainable. There are nothing wrong on the part of the Court below in dismissing the subject application and ultimately prayed to dismiss the Criminal Petition.

5. In view of the above rival contentions, the point that arise for consideration in this petition is whether the impugned order passed by the Court below is liable to be set aside.

6. As per the records and submissions made by both the sides, the relief sought in this Criminal Petition is to permit the petitioner/prosecution to file the document, i.e., order passed by the Superintendent of Police, CBI, Visakhapatnam, under Section 17 of the Prevention of Corruption Act, 1988, permitting one V.K.C.Reddy, the then Deputy Superintendent of Police, CBI, Visakhapatnam, to investigate the case. In the course of submissions, it is brought to the notice of this Court that the so-called authorisation bears no date. The Court below held that when an earlier application to receive the said authorisation was dismissed, a second application seeking the same relief is not maintainable and ultimately dismissed the application.

7. In support of his contentions, the learned Special Public Prosecutor for CBI Cases had relied on a decision of the Apex Court in Central Bureau of Investigation Vs. R.S.Pai and another¹. The said citation relates to the provisions of Section 173(5) & (8) of Cr.P.C, wherein, it was held that additional evidence gathered during investigation can be produced by a police officer, even after submission of charge-sheet; and, the word 'shall' used in sub-section 5 of Section 173 of Cr.P.C. cannot be interpreted as mandatory, but as directory. Therefore, the documents collected in the course of investigation can be forwarded to the Magistrate, either before or after filing of the

¹ (2002) 5 Supreme Court Cases 82

charge-sheet, which would not cause any prejudice to any party. This mandate is with regard to the collection of incriminating material/documents against the accused, but not with regard to the letter of authorisation given to the investigating officer. Further, the subject application was dismissed as not maintainable. The Court below rightly held that so long as the first order passed in CrI.M.P.No.26 of 2008 by the Court below is in force, a second application for the same relief cannot be maintained before the said Court. So, there is no infirmity in the impugned order. The Criminal Petition is devoid of merit and is liable to be dismissed.

8. In the result, the Criminal Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

06th August, 2018
Bvv

