

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.14254 OF 2016

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed by the petitioner/accused to quash the order dated 31.08.2016 passed in CrI.M.P.No.1459 of 2016 in C.C.No.6 of 2013 on the file of the II Additional Special Judge for CBI Cases, Visakhapatnam.

2. Heard learned counsel for the petitioner/accused, the learned Special Public Prosecutor for CBI cases representing the respondent-State and perused the record.

3. Learned counsel for the petitioner/accused would contend that the impugned order is contrary to law and facts of the case; that the subject document viz. LD 35- Forensic Voice Examination Report dated 07.08.2013, cannot be read in evidence in the subject Calendar Case without examining the author thereof as witness; that the impugned order is erroneous and ultimately prayed set aside the same.

4. On the other hand, learned Special Public Prosecutor for CBI cases would contend that under Section 292 Cr.P.C., the subject document can be received in

evidence without calling the author thereof as witness, and there is no infirmity in the impugned order, and ultimately, prayed to dismiss the Criminal Petition.

5. In view of the above submissions, the point for determination is whether the impugned order is liable to be set aside ?

6. The petitioner was charge sheeted for the offences under Sections 7 and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988. Trial began in the subject Calendar Case and P.Ws.1 to 10 were examined on behalf of the prosecution. At the stage of further evidence on prosecution side, the prosecution filed CrI.M.P. No.1459 of 2016 in C.C. No.6 of 2013 before the Court below to read the Forensic Voice Examination Report dated 07.08.2013 (L.E.13) as evidence in the said Calendar Case without examining its author as witness. Vide the impugned order, the said petition was allowed by the Court below and the Forensic Voice Examination report dated 07.08.2013 given by Sri Amitosh Kumar, the Senior Scientific Officer, Grade-II -cum- Assistant Chemical Examiner to the Government of India, Central Forensic Science Laboratory, New Delhi was ordered to be admitted in evidence without calling him as witness under Section 292 Cr.P.C. while

giving liberty to the petitioner/accused to examine the expert in defence, if he is so advised.

7. The subject document relates to examination of questioned voice copied in C.D. with the admitted voice copied in C.D. The subject document can be tendered and marked through the investigating officer, subject to proof thereof in accordance with law. At this stage, it is not appropriate to state anything with regard to admissibility of the said document in evidence when marked through the investigating officer. Always, admissibility and proof of a document is in accordance with the procedure established under law. The prosecution has to choose as to how the document is required to be marked and proved in evidence. If any document is not proved in accordance with the procedure established under law, that cannot be relied on and it would be a futile exercise to mark it. The petitioner/ accused objected for marking of the subject document without examining the author thereof. In such an event, it is left open to the trial Court to mark the subject document viz. Forensic Voice Examination report dated 07.08.2013 given by Sri Amitosh Kumar, the Senior Scientific Officer, Grade-II –cum- Assistant Chemical Examiner to the Government of India, Central Forensic Science Laboratory, New Delhi. However, the trial Court

shall determine with regard to its admissibility and proof at the time of delivering judgment.

8. With the above observation, the Criminal Petition is disposed of.

Miscellaneous Petitions pending, if any, in the Criminal Petition shall stand closed.

Dr. SHAMEEM AKTHER, J

11.09.2018
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