

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.11674 OF 2017

ORDER:

The petitioners, who are arraigned as accused Nos.3, 7 and 8, questioning the order dated 27.10.2017 in Criminal M.P. No.1179 of 2017 in C.C. No.28 of 2004, passed by the learned I Additional Special Judge for CBI Cases, Hyderabad, filed the present Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973.

2. Criminal M.P. No.1179 of 2017 was filed by the petitioners under Section 243 read with Section 311 of the Code of Criminal Procedure, 1973 (for short 'Code') to permit them to lead defence evidence. Their request is based on that there were communications exchanged between them and the bank and, therefore, petitioner No.1, who is accused No.3, intends to lead defence evidence and to permit him to adduce defence evidence. The said request was resisted to by the learned Special Public Prosecutor for CBI Cases contending that similar applications at the stage of arguments filed by the petitioners were allowed to recall PWs.3, 14 and 17 enabling the petitioners to cross-examine further as part of defence evidence and, later, again, the case was posted for arguments, and then also, again, an application to recall PW.1 for further cross-examination was filed, but the same was dismissed by the learned Special Judge and posted for arguments.

3. The learned Special Judge for CBI Cases referring to the submissions made by the learned Special Public Prosecutor before him, referred to the proceedings and on perusal of the record, recorded that the matter was originally posted for defence evidence on 06.10.2016 and again to 18.10.2016 and again on 02.11.2016 as a last chance again to 11.11.2016 and also to 24.11.2016, and on that day, the defence evidence was treated as nil and at that juncture, the petitioner filed Criminal M.P. No.792 of 2016 to recall PWs.3, 14 and 17 for further cross-examination as part of defence evidence and the said application was allowed for the reasons stated therein, and therefore, the witnesses were recalled and further cross-examined and again the case was posted for arguments to 27.07.2017 and adjourned to 08.08.2017 and since then it was coming up for arguments and at that stage the application in Criminal M.P. No.887 of 2017 to recall PW.1 for further cross-examination was filed and that was dismissed and later again the matter was posted for arguments finally and petitioner No.2 and 3 herein being accused Nos.7 and 8, which are companies, shown as represented by accused No.3 in the police report (charge sheet) on 26.09.2017, the trial Court directed petitioner No.1 to submit authority under Section 305 of the Code to represent petitioner Nos.2 and 3 and posted the matter for arguments to 27.10.2017, but, petitioner No.1 filed the application in Criminal M.P. No.1179 of 2017 stating that there were communications exchanged between the petitioners and the bank, and, therefore, petitioner No.1 -

accused No.3 intends to lead defence evidence and to permit him to lead defence evidence.

4. The learned trial Court, observing that despite several opportunities given to the petitioners, they did not avail any opportunity and when the matter reached the stage of arguments, the petitioners filing applications, one after another, and thus, shows that they are trying to procrastinate the proceedings for the reasons best known to them and if the reasons shown by them are accepted, there will not be any end to trial, and in any case as the calendar case relates to the year 2004 and the petitioners are not getting ready to proceed with the arguments, but, filing applications, one after another without any reasons, dismissed the application.

6. Heard Sri Milind G. Gokhale, learned counsel for the petitioners, and the learned Special Public Prosecutor for CBI Cases for the respondent, and perused the order under challenge including the material on record.

7. Sri Milind G. Gokhale, learned counsel for the petitioners, would submit that during the course of banking transactions with the bank, the petitioners have exchanged various communications with the bank in regard to various limits sanctioned by the bank and the modalities of its utilisation and since allegations pertain to the sanction of limit and its misutilisation, it is just and proper to bring on record the necessary facts for the just decision of the case and since

the said particulars and details are within the knowledge of petitioner No.1, he intends to depose the same and mark the documents as copies and, as such, the petitioners sought indulgence of the Court to reopen the case and to permit the petitioners to lead defence evidence and the learned trial Court was not justified in rejecting the request.

8. The learned Special Public Prosecutor for CBI Cases would strongly oppose the request stating that the petitioners, earlier, at the relevant stage, did not avail of the opportunity of leading defence evidence and, later when the case came up for arguments on number of occasions, then only filed the application to recall PWs.3, 14 and 17 as part of defence evidence for further cross-examination and that petition was allowed and later again posted for arguments and even then they did not come forward with a request of this nature, but, filed yet another application in Criminal M.P. No.887 of 2017 to recall PW.1 for further cross-examination and the said application was dismissed and again posted for arguments and then, when the matter was posted finally for arguments, they have come up with the present application, and, therefore, it is a clear case where the petitioners are intending to stall the proceedings.

9. The learned Special Public Prosecutor would further submit that the present Criminal Petition under Section 482 of the Code is not maintainable in view of the law laid down by the Hon'ble Supreme Court in **Sethuraman v. Rajamanickam** [2009 CriLJ 2247] as it is intended to get over the difficulty contained in Section 392(7) of the

Code and at any rate the petition itself, since bereft of relevant particulars, request to dismiss the present criminal petition.

10. The learned Special Public Prosecutor also places reliance in **V.R. Mathur v. State of Telangana** [Criminal Petition No.9279 of 2017 dated 04.10.2017] filed under Section 482 by petitioner No.1 herein (accused No.3) questioning the order passed in Criminal Petition No.9279 of 2017 to recall PW.1 for further cross-examination which was dismissed and this Court referring to the decisions in **Sethuraman v. Rajamanickam** [2009 CriLJ 2247] and **Girish Kumar Suneja v. C.B.I.** [AIR 2017 SC 3620], dismissed the criminal petition. The learned Special Public Prosecutor would submit that similar situation occurs in the present petition also, and, therefore, requests to dismiss the present petition.

11. On the basis of the arguments advanced by the learned counsel for the petitioners and the learned Special Public Prosecutor for CBI, it is to be seen whether the order under challenge is liable to be set aside?

12. A perusal of the petition filed before the trial Court shows that it was filed under Section 243 read with Sections 233 and 311 of the Code. Substantially, it is an application filed under Section 311 of the Code. What all stated by the petitioners in the application to substantiate the request is contained in paragraph No.5. It reads thus:

“It is submitted that during the course of banking transactions with the bank the Petitioners have exchanged various communications with the bank with respect to various limits sanctioned by the bank and the modalities of its utilization and since the allegations pertain to the sanction of limits and its misutilisation it is just and required to bring on record the necessary facts for the just decision of the case and since the said particulars and details are within the knowledge of the Petitioner No.1 the Petitioner No.1 intends to depose the same and mark the documents in defense and as such the Petitioners have taken indulgence of this Hon’ble Court and filed the present Petition to reopen the case and to permit the Petitioners to lead the defense evidence or otherwise the Petitioners will suffer irreparable loss and damage which may not be compensated by any means.”

It is clear from what is mentioned in the above paragraph No.5 of the petition filed before the trial Court, that the petitioners are not inclined to refer to the details of correspondence though, they are not obligated to mention the contents of each document, but, they are certainly obligated with the duty to mention the dates of letters that constitute correspondence between PW.1’s bank and petitioner No.1 (accused No.3) and other two petitioners, accused Nos.7 and 8 respectively. Since the case is coming up for arguments, it cannot also be said that the petitioners are not supposed to disclose their defence on the ground that it is premature to disclose their defence.

13. The learned trial Court was considerate in allowing the application earlier filed in Criminal M.P. No.792 of 2016 to recall PWs.3, 14 and 17 despite the calendar case was coming up for arguments, number of times, as mentioned in paragraph No.2 of the order, and they were cross-examined and then again calendar case was posted for arguments and thereafter, again an application under Criminal M.P. No.887 of 2017 was filed, but the same was dismissed. The petitioners did not disclose whether they have challenged the order passed by the trial Court in Criminal M.P. No.887 of 2017. Later, again, when the case was coming up for arguments, the application in Criminal M.P. No.1179 of 2017 was filed and when the same was dismissed, the present criminal petition is filed.

14. It is also necessary to advert to the purpose for which Criminal M.P. No.887 of 2017 was filed by the petitioners. In fact, it was filed by the petitioner No.1 to recall PW.1 under Section 311 of the Code for cross-examination, but that application was dismissed and when petitioner No.1 aggrieved by the said dismissal order, filed Criminal Petition No.9279 of 2017, and this Court referring to the submissions made by the learned counsel for the petitioner and the learned Special Public Prosecutor for CBI Cases, dealt with elaborately referring to the rulings in **Mohonlal Shamji Soni v. Union of India** [AIR 1991 SC 1346], **Rama Paswan v. State of Jharkhand** [2007 Cr.L.J. 2750], **Sister Mina Lalita Baruwa v. State of Orissa** [AIR 2014 SC 782], **Abdul Rehman Antulay v. R.S.**

Nayak [AIR 1992 SC 1701], **AG v. Shiv Kumar Yadav** [AIR 2015 SC 3501], **Sethuraman v. Rajamanickam** [2009 CriLJ 2247] and **Girish Kumar Suneja v. C.B.I.** [AIR 2017 SC 3620], and observed that in view of the law declared by the Hon'ble Supreme Court in **Girish Kumar Suneja's Case** , referred supra, where no revision is maintainable against an interlocutory order, in view of the bar under Section 397(2) of the Code holding that a similar petition under Section 482 of the Code is also not maintainable, dismissed the petition, also holding that no ground is made out to recall PW.1.

15. The request in Criminal M.P. No.887 of 2017 to recall PW.1 for further cross-examination in connection with the communications to be confronted to him when dismissed and Criminal Petition No.9279 of 2017 filed challenging the said order by petitioner No.1, was also dismissed by this Court, it appears, only to circumvent the order passed by the learned trial Court and confirmed by this Court in Criminal Petition No.9279 of 2017, the present application is filed slightly changing the cause title by adding petitioner Nos.2 and 3, accused Nos.7 and 8 respectively, and also twisting the relief on the premise that the petitioners intended to lead defence and mark the communications and correspondence between PW.1's bank and themselves. What was not achieved by the petitioners in Criminal M.P. No.887 of 2017 can not be allowed to achieve by allowing the present criminal petition, not only in view of the law declared by the Hon'ble Apex Court in **Girish Kumar**

Suneja's Case, referred supra, but also for the aforesaid reasons and further for the reason that the petition itself is bereft of relevant particulars to make out any concrete case for acceding to their request.

13. Therefore, the Criminal Petition is dismissed at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present Criminal Petition stand dismissed.

April 3, 2018.
PV

A. SHANKAR NARAYANA, J

