

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 05.07.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.OP.Nos.4468 & 4478/2019 & Crl.MP.Nos.2649, 2650, 2672 & 2673/2019

Ramanujam Sesharathnam

..

Petitioner
in both petitions

Vs

The State by
The Deputy Superintendent
CBI/BS&FC/
Bangalore.

..

Respondent
in both petitions

Prayer in Crl.OP.No.4468/2019:- Petition filed under section 482 Cr.P.C., to set aside the order of the Trial Court in Crl.MP.No.5044/2018 dated 05.01.2019 in CC.No.41/2015 on the file of the learned XI Additional Special Judge for CBI Cases, Chennai.

Prayer in Crl.OP.No.4478/2019:- Petition filed under section 482 Cr.P.C., to set aside the order of the Trial Court in Crl.MP.No.5045/2018 dated 05.01.2019 in CC.No.2/2018 on the file of the learned XI Additional Special Judge for CBI Cases, Chennai.

For Petitioner in both
petitions

: Mr.N.R.Elango, Senior
Counsel for Mr.A.R.Sakthivel

For Respondents in both
petitions

: Mr.K.Srinivasan, Spl.PP [CBI]

COMMON ORDER

The above petitions have been filed to set aside the orders dated 05.01.2019 passed in Crl.MP.Nos.5044 and 5045/2018 in CC.Nos.41/2015 and 2/2018 by the learned XI Additional Special Judge for CBI Cases, Chennai.

Crl.OP.No.4468/2019

2 The petitioner is arrayed as A-2 out of 16 accused and

the case of the respondent/CBI is that the petitioner along with the other accused had entered into criminal conspiracy during the year 2012 and cheated Dena Bank, T.Nagar Branch, by availing credit facility to the tune of Rs.97.42 Crores for investing the same in three projects, viz., [1] RTO, Karnataka ; [2] RTO, Gujarat ; and [3] Rashtriya Swasthya Bima Yojana [RSBY], by suppressing the fact of the credit facility availed from the other Banks for the very same projects during the years 2009 and 2011 and when the funds were sanctioned, the same were siphoned off and was diverted to Shell Companies. Thereby, the petitioner had committed the offences punishable under sections 420, 467, 468 and 471 IPC and under sections 13[2] read with 13[1][d] of the Prevention of Corruption Act, 1988.

Crl.OP.No.4471/2019:-

3 The petitioner is arrayed as A-2 out of 16 accused and the case of the respondent/CBI is that the petitioner along with the other accused had entered into criminal conspiracy during the year 2009 and cheated Union Bank of India, by availing credit facility to the tune of Rs.64.50 Crores for a Wifi Technology Project to provide Broad Band and related services to the customers and when the funds were sanctioned, the same were siphoned off and was diverted to Shell Companies. Thereby, the petitioner had committed the offences punishable under sections 420, 467, 468 and 471 IPC and under sections 13[2] read with 13[1][d] of the Prevention of Corruption Act, 1988.

4 Pending trial in CC.Nos.41/2015 & 2/2018, the petitioner had filed petitions in Crl.MP.Nos.5044 & 5045/2018 under section 205 Cr.P.C., seeking to dispense with his appearance before the Court below in connection with the above cases, on the ground of ill-health of his aged parents-in-law and the education of his sons in USA and that the petitioner himself is suffering from prostate cancer and that he is under constant monitoring and medication at Urological Associates of Central Jersey, New Jersey and that, he requires continuous tests and treatments and that he has been advised by the doctors, not to travel far and that there should be no interruption in his medical care and thereby, wanting to be with his family and to take care of his health.

5 The respondent had filed counter in the respective cases stating that the petitioner/A-2 had left the Country without obtaining permission of the Court and without informing the Court and that the presence of the petitioner before the Trial Court was necessary for the progress of the trial. It had been further stated by the respondent in the counter that the petitioner had cheated the Banks to several Crores of Rupees and the Trial Court, after bearing both parties, being not

convinced with the reasons stated by the petitioner, had dismissed the petitions, holding that the petitioner should appear before the Trial Court and further observed that if the petitioner fails to appear before the Court below, the Court will pass appropriate orders based on the prevailing circumstances at that point of time. Against the order of dismissal of the petitions, the petitioner had approached this Court with the present Original Petitions seeking to set aside the order of the Court below made in CrI.MP.Nos.5044 & 5045/2018 in CC.Nos.41/2015 & 2/2018 dated 05.01.2019.

6 This Court, vide order dated 20.02.2019, had called for individual reports from the Trial Court pertaining to CC.Nos.41/2015 and 2/2018 with regard to the need for the appearance of the petitioner before the Trial Court. Accordingly, the learned Trial Judge had sent individual detailed reports pertaining to CC.Nos.41/2015 and 2/2018 in respect of the petitioner herein, stating that the presence of the petitioner is necessary before the Trial Court. The said reports are taken note of.

7 Mr.N.R.Elango, learned Senior counsel appearing for Mr.A.R.Sakthivel, learned counsel for the petitioner would submit that the presence of the petitioner in USA with his family is necessary due to compelling situation and that he is a permanent resident of USA. He would further submit that the wife of the petitioner is staying away from the family in USA due to her job and that his father-in-law is a heart patient who had underwent an Open Heart surgery and that his elder son is having asthma problem. Learned counsel would further submit that the petitioner himself is suffering from Prostate Cancer and that he requires constant medication and treatment. He would further submit that the entire case of the prosecution is borne out by records and that the presence of the petitioner may not be required for progress of trial and the petitioner will ensure that he will be duly represented by a counsel on all dates of hearing.

8 Per contra, the learned Special Public Prosecutor [CBI Cases] appearing for the respondent would vehemently oppose stating that the petitioner had neither obtained the permission from the Court nor informed the Court about his leaving from India and that due to his absence, the Trial Court is unable to question the accused and proceed further in the above cases and that the presence of the petitioner before the Trial Court is very much essential for the progress of the trial. He would further submit that the petitioner cannot be inordinately allowed to evade appearance before the Court below which has resulted in the trial being delayed.

9 At this juncture, the learned Senior counsel for the petitioner would submit that, the petitioner, without prejudice to his rights and contentions, is prepared to appear before the Trial Court on 06.08.2019 and he has also filed necessary Affidavits of Undertaking dated 27.06.2019, to that effect. He would further submit that though no specific date has been mentioned in the affidavits, the petitioner undertakes to appear on 06.08.2019.

10 In response to the same, the learned Special Public Prosecutor appearing for CBI would submit that, in the event of the petitioner appearing before the Trial Court, the Trial Court may be allowed to decide the issue afresh with regard to the requirement of the appearance of the petitioner by taking into consideration, the prevailing situation at the relevant point of time.

11 This Court has considered the rival submissions and also perused the Reports of the trial Judge and the materials placed including the Affidavits of Undertaking dated 27.06.2019 filed by the petitioner.

12 Taking into consideration, the submissions made by the respective learned Counsel and the Affidavits of Undertaking filed by the petitioner, the petitioner is directed to appear before the Trial Court on 06.08.2019 and on fresh application/s being filed by the petitioner seeking to dispense with the appearance, the Trial Court shall pass orders on merits and in accordance with law taking into consideration, the facts and circumstances prevailing at that time.

13 The Criminal Original Petitions stand closed with the above direction. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

AP

To

1.The XI Additional Special Judge for CBI Cases
Chennai.

2,The Deputy Superintendent
CBI/BS&FC/
Bangalore.

3.The Public Prosecutor
High Court, Chennai.

+4cc to Mr.A.R.Sakthivel, Advocate, S.R.No. 56322, 56321

Cr1.OP.Nos.4468 & 4478/2019

JP (CO)
GN (17/07/2019)



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