

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI, J.

Crl.O.P.No.2216 of 2019
and
Crl.M.P.Nos.1439 & 1441 2019

S.V.Nagaraja Reddy

... Petitioner

Vs.

State Rep by
Inspector of Police
CBI / BS & FC / Bangalore
RC-5(E)/2007

... Respondent

PRYER: Criminal Original Petition filed under section 482 of Cr.P.C. to call for the records in connection with the impugned order dated 07.01.2019 in Memo Sr.No.4749 of 2018 in C.C.No.3 of 2009 pending on file of the Learned XI Additional Special Judge for CBI Cases, Chennai, and set aside the same.

For Petitioner: Mr.Satish Parasaran, Senior Counsel
M/s.R.Parthasarathy

For Respondent : Mr.K.Srinivasan
Special P.P. for (CBI Cases)

ORDER

This petition has been filed under section 482 of Cr.P.C. to call for the records in connection with the impugned order dated 07.01.2019 in Memo SR.No.4749 of 2018 in C.C.No.3 of 2009 pending on file of the Learned XI Additional Special Judge for CBI Cases, Chennai, and set aside the same.

2.The petitioner has been implicated and arrayed as the 4th accused in C.C.No.3 of 2009 for commission of offence under Section 120B r/w 409, 420 IPC and under Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988.

3.The learned counsel for the petitioner would submit that

after investigation, a petition has been filed for discharge in CrI.M.P.No.1400 of 2009 and the said discharge petition was allowed by the learned Trial Court vide its order dated 11.09.2009. Thereafter, the respondent filed CrI.R.C.No.1139 of 2009 against the said order before this Court on 22.06.2018 and the order of discharge was set aside. Challenging the order passed by this Court in CrI.R.C.No.1139 of 2009, the petitioner preferred SLP before the Hon'ble Apex Court and the same was also dismissed by the Hon'ble Apex Court.

4. In the meanwhile, the evidence of PW1 to PW3 (in part) has been recorded and the Trial Court issued a fresh summon to the petitioner / 4th accused in view of the order of passed by this Court in CrI.R.C.No.1139 of 2009 dated 22.06.2018.

5. Thereafter, the petitioner / 4th accused filed a Memo in Sr.No.4749 of 2018 on 16.10.2018 and requested the Trial Court to proceed C.C.No.3 of 2009 in the manner known to law as regards 4th accused. However, in the absence of the petitioner the evidence of PW1 to PW3 has been recorded when the 4th accused had the benefit of an order of discharge and permitted to recall and cross examine the said witnesses at a later stage, if necessary. However, the said memo was rejected by the Trial Court. Thereafter, the Trial Court has referred the same to the Principal Special Judge (CBI Cases), Chennai for splitting up and the same is pending. Aggrieved by the said order dated 07.01.2019, the present Criminal Original Petition is filed before this Court.

6. The learned counsel for the petitioner would further submit though the order of discharge has been set aside in the year 2018, the petitioner never had an opportunity of recalling the witness as granted by the Trial Court for which the petitioner has filed a Memo in Sr.No.4749 of 2018 in C.C.No.3 of 2009 before the Trial Court. He would further submit that this court (*) may issue appropriate direction to (*) the Trial Court to frame a separate charge against the present accused, (*) in the same case and if the accused wants to recall the prosecution witnesses to cross examine opportunity may be given.

7. The learned Special Public Prosecutor (CBI Cases) would submit that the three witnesses have already been examined, if the split up is (*) not allowed, it would cause great prejudice to the prosecution.

8. Heard the learned counsel appearing for the petitioner as well as the Special Public Prosecutor.

9. Considering the above, I am inclined to issue a direction to the Trial Court that without splitting up the case, separate

charge shall be framed in respect of the 4th accused / petitioner. Thereafter, the Trial Court shall proceed the matter further in the same C.C.No.3 of 2009. Thereafter, PW1 to PW3 shall be recalled. PW1 to PW3 are entitled to refresh the memory by reading their earlier evidences recorded by the Trial Court. The respondent shall exercise his discretion to conduct chief examination of witnesses. The petitioner shall be served with the free copies and the entire deposition of PW1 to PW3. Thereafter the petitioner will be entitled to cross examination.

10. Accordingly, this petition stands disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

(22/02/2019)

(*) Correction carried out as per order of this Court dated 03.06.2019 made in CRL OP No.2216 of 2019

sd/-

Assistant Registrar((CS-IV)

(04.06.2019)

//True copy//

Sub Assistant Registrar

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To

1. The XI Additional Special Judge for CBI Cases, Chennai, (*) To be substituted the order despatched on 29.03.2019
2. The Principal Special Judge (CBI Cases) Chennai
3. The Inspector of Police, CBI/BS &FC/Bangalore, RC-5(E)/2007
4. The Public Prosecutor, High Court of Madras

+2ccs to Mr.S.Parthasarathy, Advocate SR.No.8344

+1 cc to Mr.R.Palaniandavan, Advocate, Sr.No. 45572(09.07.2019)

Cr1.O.P.No.2216 of 2019

and

Cr1.M.P.Nos.1439 & 1441 2019

SSI (CO)

GMV (27/02/2019)

CSL/06.06.2019