

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP Nos.2434 to 2436 of 2019

and

Crl.MP Nos.1593 to 1595 of 2019

S.Kannan .. Petitioner
in Crl.O.P.No.2434 of 2019 /
Accused No.6

Vedagiri Gowthaman .. Petitioner
in Crl.O.P.No.2435 of 2019 /
Accused No.4

K.S.Ravi .. Petitioner
in Crl.O.P.No.2436 of 2019 /
Accused No.5

...Vs...

The State represented by,
Deputy Superintendent of Police,
SPE, CBI STF New Delhi.
(RC/DST/2013/A/0019/CBI/STF/DL)

..Respondent
in All Crl.OPs /
Complainant

सत्यमेव जयते

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records of the order dated 28.01.2019 passed in C.C.No.12 of 2017, on the file of the Hon'ble XIV Additional Judge for CBI cases, Chennai, quash the same and consequently direct the Hon'ble XIV Additional Judge for CBI cases Chennai, to hear all the parties on framing of charges as per the Criminal Procedure Code and look into the availability or otherwise of materials on record as against each accused.

For Petitioner :
(in Crl.O.P.No.2434/2019): Mr.A.R.L.Sundaresan, Sr.counsel
for M/s.M.Sneha

(in Crl.O.P.No.2435/2019 : Mr.Sathish Parasaran, Sr.counsel
for Mr.D.Ravichandran

(in Crl.O.P.No.2436/2019 : Mr.P.S.Raman, Sr, Counsel
for Mr.R.Vivekananthan

For Respondent :Mr.K.Srinivasan, Spl PP for CBI Cases
(in All Crl.OPs)

COMMON ORDER

These petitions have been filed challenging the proceedings of the Court below dated 28.01.2019.

2. The petitioners are facing charges for an offence under Section 120B, 409, 467, 477-A IPC and Section 131(1)(c)(d) of Prevention of Corruption Act, 1988.

3. Earlier petitions were filed seeking for discharge. The same was allowed by the trial Court. Subsequently, by an order dated 25.07.2018, made in Crl.R.C.Nos.667,682 to 2018, this Court had set aside the order of the trial Court and directed the trial Court to frame charges and complete the trial within a period of 12 months. Thereafter, the charges were framed by the Court below. This become a subject matter of challenge before this Court in Crl.O.P.Nos.22121 to 22125 of 2018. This Court, after hearing all the parties, passed the following order:

"84. In the result, these Criminal Original Petitions seeking to quash the charges are dismissed, however, with the following directions:

i. The charges against the accused in C.C.No.12 of 2017 by the learned XIV Additional Judge, CBI cases, Chennai being improperly framed, the matter is remanded/remitted back to the Trial Court for consideration and for framing charges afresh.

ii. The Trial Court is directed to carefully look into all the materials and frame proper and necessary charges in respect of the each and every accused/A1 to A7, in accordance with the procedures, as

contemplated in the Code of Criminal Procedure, particularly, Chapter XVII of Cr.PC, based on the materials available.

iii. If necessary, the Prosecution can assist the Trial court, by filing draft charges."

4. Aggrieved by the same, the accused persons approached the Hon'ble Supreme Court by filing Special Leave Petitions. The only contention that was raised before the Hon'ble Supreme Court was that the order passed by this Court sounded as if there are sufficient materials, which are already available on record and the trial Court can proceed to frame the charges. The Hon'ble Supreme Court by an order dated 21.01.2019, passed the following order :

" 2. The grievance raised by the appellants - accused is with regard to direction No.ii contained in paragraph 84 of the impugned judgment and order dated 9th November, 2018 of the High Court.

3. The contention is that the High Court had directed the learned trial Court to look into all materials and frame proper and necessary charges on an assumption that such materials exist.

4. If the above is the grievance of the appellants - accused we are of the view that the same can be taken care of by directing the learned trial Court not to proceed on any such assumption as perceived by the accused appellants but to look into such materials only if they are already on record and can be considered by the learned trial Court for framing of charges."

5. This Court heard Mr.A.R.L.Sundaresan, Mr.Sathish Parasaran and Mr.P.S.Raman, learned Senior counsel appearing on behalf of the petitioners and Mr.K.Srinivasan, learned Special Public Prosecutor for CBI cases appearing on behalf of the respondent.

6. The learned Senior Counsel appearing on behalf of the petitioners submitted that in view of the specific clarification given by the Hon'ble Supreme Court, the trial Court cannot proceed to frame the charges based on assumptions and the trial Court has to necessarily look into the materials that have already been collected by the prosecution and put

questions regarding the same to each of the accused persons and only thereafter frame charges.

7. The apprehension that has now been raised is by the learned Senior counsel appearing on behalf of the petitioners is that the trial Court does not seem to appreciate the order passed by the Hon'ble Supreme Court and trial Court is proceeding to frame charges based on the assumption that the materials are already available on record. The learned Senior counsel further submitted that the prosecution has already given draft charges to the trial Court and it is only based on these draft charges, the trial Court will proceed to frame the charges against the accused persons. Therefore, the learned Senior counsel would submit that if the trial Court proceeds to frame charges in this manner, relief that has been given by the Hon'ble Supreme Court will completely lose its effect.

8. The learned Special Public Prosecutor appearing on behalf of the respondent submitted that the petitioners have approached this Court on mere apprehensions. The learned counsel submitted that the order passed by the Hon'ble Supreme Court is very clear and the trial Court has to necessarily follow the said order. The learned counsel further submitted that the trial Court has to strictly go by the provisions of Sections 239 and 240 of Cr.P.C and frame charges. Therefore, the learned counsel submitted that these petitions cannot be entertained merely based on the apprehension raised by the petitioners.

9. This Court has carefully considered the submissions made on either side and also the materials placed on record.

10. The Hon'ble Supreme Court has given a clear direction to the trial Court as to the manner in which the charges will have to be framed. Para 4 of the order makes it clear that the trial Court will have to look into the materials and only thereafter proceed to frame the charges. The Hon'ble Supreme Court has specifically held that the trial Court cannot proceed to frame charges on mere assumption. Therefore except for reiterating the order passed by the Hon'ble Supreme Court, there is nothing new that can be added by this Court.

11. The manner in which the charges will have to be framed in a warrant case has been clearly spelt out under Sections 239 and 240 of Cr.P.C. The trial Court has to strictly follow these two provisions at the time of framing of the charges. To reiterate the clarification that has been made by the Hon'ble Supreme Court, the trial Court is directed to strictly consider the materials available on record, which has been collected by the prosecution in the course of

investigation and put those materials to each of the accused persons and seek for their explanation. Thereafter the trial Court has to assess these materials along with the answers that have been given by the accused persons and thereafter satisfy itself about the framing of the charges.

12. It is made clear that at the time of framing charges, the trial Court only needs to put the materials to the accused persons and there is no requirement to hear the counsel on the sufficiency of the materials. There is no such procedure contemplated under Sections 239 and 240 of Cr.P.C.

13. These criminal original petitions are disposed of with the above directions. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Deputy Superintendent of Police,
SPE, CBI STF New Delhi.

2. XIV Additional Judge for CBI cases
Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.M.Sneha, Advocate, S.R.No.7210

+1 cc to Mr.Vivekananthan, Advocate, S.R.No.7212

+1 cc to Mr.Ravichander, Advocate, S.R.No.7211

Cr1.OP Nos.2434 to 2436 of 2019

TM(CO)
SSM(29/01/2019)