

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P.No.3582 of 2019

Rabindra Kumar Bhalotia  
Proprietor of  
M/s.Ridhi Siddhi Udyog,  
Kolkata - 700 027

.. Petitioner / Petitioner /  
2<sup>nd</sup> Accused

Vs.

State by The Inspector of Police  
CBI, ACB, Chennai.

.. Respondent / Respondent /  
Complainant

PRAYER: This Criminal Original Petition is filed under Section 482 Cr.P.C. to set aside the order, dated 30.11.2018 made in CrI.M.P.No.5010 of 2018 in C.C.No.17 of 2015, by Principal Special Judge for CBI Cases, Chennai and consequently, to direct the respondent to furnish/supply the documents sought for by the petitioner in CrI.M.P.No.5010 of 2018.

For Petitioner : Mr.Vishnu Mohan

For Respondent : Mr.K.Srinivasan, SPP

ORDER

This Criminal Original Petition is filed under Section 482 Cr.P.C. to set aside the order, dated 30.11.2018 made in CrI.M.P.No.5010 of 2018 in C.C.No.17 of 2015, by Principal Special Judge for CBI Cases, Chennai and consequently, to direct the respondent to furnish/supply the documents sought for by the petitioner in CrI.M.P.No.5010 of 2018.

2. The facts, in a nutshell, which are necessary for disposal of this Criminal Original Petition, are that the Petitioner/A2 was charge sheeted, for the offences under Section 120B of IPC read with Sections 7, 12, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, in CC.No.17 of 2015, alleging that the Petitioner, who was the successful bidder for supply of brake blocks to the Railways, had entered in a conspiracy with the public officials of the Railways Dept and

bribed them for expediting the issue of signed challans, R.Notes and favourable suitability reports, in respect of the consignments supplied by the Petitioner/A2 and processing the payment of bills. The Petitioner/A2 has filed a Petition in Cr.MP.No.5010 of 2018 before the Trial Court, under Section 91 read with 207 of Cr.PC, seeking a direction to the Respondent/Complainant to furnish copies of documents/details relied on by the Respondent/Complainant, namely, (a) Mirror image of the compact discs, which were received by CBI, Anti Corruption Branch, Chennai, (b) Mirror image of SD Card/Hard Disk on which the voice sample of the applicant was taken and (c) the application/request made on the basis of which the permission was granted by the Home Secretary, allowing interception of phones of the co-accused, in order to effectively defend the case against him.

3. Before the Trial Court, in the said petition, a counter was filed by the Respondent/Complainant, contending that the case is under pre-charge stage and that the documents, sought for by the Petitioner were already provided to the Court and the Petitioner as well and that if at all the Petitioner can obtain certified copies of the same from the Court at any time and the petition to furnish copies of documents has been filed only with a view to delay the framing of charges. By the impugned order, the Trial Court had dismissed the petition, on the ground that the documents are privileged documents and hence, the petitioner is not entitled to receive the same and in order to delay the proceedings only, the petitioner has filed the Petition. Hence, this Criminal Original Petition has been filed, seeking the above reliefs.

4. This court heard the submissions of the learned counsel on either side.

5. The learned counsel for the Petitioner would submit that compliance of Section 207 of Cr.P.C., is mandatory and that the CBI cannot claim privilege nor the said documents sought for by the Petitioner cannot be termed as privileged documents within the ambit of Section 124 or 162 of the Indian Evidence Act and that nothing has been stated that rendition of the documents would cause harm to the public interest. He would further submit that a mandate is cast upon the Trial Judge to see that the Petitioner gets a fair trial and therefore, he should be allowed to get the authenticated copy of the documents, which have been relied upon by the Prosecution against him and that the Trial Judge erred in not supplying the documents sought for on the ground that they are privileged documents.

6. The learned counsel for the petitioner would rely on the Judgment of the Hon'ble Supreme Court in the case of Nitya Dharmananda Vs. Gopal Sheelum Reddy reported in 2018 2 SCC 93. Relevant portion of paragraph 5 is extracted hereunder:-

"5.It is settled law that at the stage of framing of charge, the accused cannot ordinarily invoke Section 91. However, the Court being under the obligation to impart justice and to uphold the law, is not debarred from exercising its power, if the interest of justice in a given case so require, even if the accused may have no right to invoke Section 91. To exercise this power, the court is to be satisfied that the material available with the investigator, not made part of the charge-sheet, has crucial bearing on the issue of framing of charge."

7. On the other hand, the learned Special Public Prosecutor would submit that the Respondent has set out in details the reasons for not producing the letter of request before the Court and that in respect of items (1) and (2) sought for by the Petitioner, copies of DVDs have been given to him and that if there is any apprehension of the Petitioner that the conversations have been doctored or tampered with, it could be duly tested at the time of the examination of the witnesses and the scientific experts before the Trial Court. He would further submit that the judgment relied on by the learned counsel for the Petitioner cannot be made applicable to the case on hand, since those documents do not have crucial bearing on the issue of framing of charge and since there are other materials available for framing charges. He would further submit that to exercise the power of calling for documents the Court has to be satisfied before calling them whether the materials called for are necessary, at the relevant stage and in such view of the matter, the Trial Court has rightly dismissed the Petition, by the impugned order.

8. The learned Special Public Prosecutor would further submit that the case is of the year 2015 and there are totally 2 accused persons in this case and that the accused are in the habit of filing petition after petition to delay the progress of the case and that a non bailable warrant of arrest is also been pending against the petitioner. He would further submit that the Code of Criminal Procedure is the entire Code in itself, which has inbuilt safeguards, giving the petitioner protection to file appropriate petition at the stage of Trial and the Trial Court having rightly satisfied that the materials are privileged documents, rightly dismissed the petition.

9. I have gone through the order passed by the learned Principal Special Judge for CBI Cases, Chennai, dated 30.11.2018 passed in CrI.M.P.No.5010 of 2018 in C.C.No.17 of 2015.

10. Though there is a discrepancy in the impugned order, stating that the mirror image of the DVDs is a privileged documents, it is not so. However, this Court is of the opinion that the letter of request, seeking permission to intercept the telephonic conversation is a privileged document and further the petitioner has not made out a ground regarding the necessity or desirability of production of the document. In respect of the Judgment referred above and the facts on hand, the petitioner has also not made out any ground that the non production of the letter of request has a crucial bearing. In other aspects, I do not find any infirmity in the impugned order and hence, this Criminal Original Petition is dismissed.

Sd/-  
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Jer/Srcm

To

1. The Principal Special Judge for CBI Cases, Chennai.
2. The Inspector of Police, CBI, ACB, Chennai.
3. The Public Prosecutor, High Court of Madras.

CrI.O.P.No.3582 of 2019

SSM(09/04/2019).

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