

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.OP.No.5757 of 2019

Pratap Jampala

..Petitioner/A1

Vs

State by Deputy Superintendent of Police
SPE/CBI/ACB/Chennai

..Respondent /Complainant

Prayer:- This Criminal Original Petition is filed, under Section 482 of Cr.PC, to set aside the order dated,24.02.2019, made in CrI.MP.No.6067 of 2014 in CrI.MP.No.762 of 2013 in CC.No.37 of 2013, by the XII Additional Special Court for CBI Cases, at Chennai and consequently, to direct the Trial Court to consider the RTI Report of the Mandal Revenue Officer, Tahsildar, Madanapalle Mandal, Chittoor District, Andhra Pradesh, as additional grounds in the discharge petition in CC.No.37 of 2013.

For Petitioner : Mr.K.Suresh Babu

For Respondent : Mr.K.Srinivasan, SPP(CBI)

ORDER

This Criminal Original Petition is filed to set aside the order dated,24.02.2019, made in CrI.MP.No.6067 of 2014, in CrI.MP.No.762 of 2013 in CC.No.37 of 2013, by the XII Additional Special Court for CBI Cases at Chennai and to direct the Trial Court to consider the RTI Report of the Mandal Revenue Officer, Tahsildar, Madanapalle Mandal, Chittoor District, Andhra Pradesh, as additional grounds in the discharge petition in CC.No.37 of 2013.

2. The facts, in a nutshell, which are necessary for disposal of this Criminal Original Petition, are that the Petitioner and his wife were charge sheeted for the offences under Section 109 of IPC read with 13(2) read with 13(10)(e) of the Prevention of Corruption Act, 1988, arraying them as A1 and

A2, in CC.No.37 of 2013, on the file of the XII Additional Special Court for CBI cases at Chennai. The allegation against the Petitioner/A1 is that during the period from 01.01.2005 to 30.09.2012, the Petitioner/A1 and his wife/A2 had disproportionate assets to the tune of Rs.1,20,36,632.83/-, constituting a DA Percentage of 127%. The Petitioner/A1 and his wife/A2 had filed a petition for discharge under Section 239 of Cr.PC in CrI.MP.No.762 of 2013, in which, they had filed a petition in CrI.MP.No.6067 of 2014, to accept the MRO Certificates, obtained from the Revenue Authorities as documents before the Trial Court, as additional grounds for the discharge petition. In CrI.MP.No.6067 of 2014, the Respondent had also filed a counter, contending that at the stage of framing charge, additional documents need not be considered. The Trial Court, after hearing the argument of the parties, by the impugned order, had dismissed the said petition to accept the MRO documents on the ground that the documents sought to be received were not all in existence till filing of the charge sheet and they need not be relied on for deciding the discharge application. As against the same, this Criminal Original Petition has been filed, seeking the relief, as stated above.

3. The learned counsel for the Petitioner/A1 would contend that the petition for discharge, under Section 239 of Cr.PC in Cr.MP.No.762 of 2013 has been filed, emphasizing that the agricultural income earned by his wife/A2 was concealed by the Prosecution in the charge sheet, though the quantum of agricultural income earned by his wife/A2 was recorded by the Prosecution, while recording the statement of LW.46 and the proof of such income had also been submitted by LW.46, who is the brother of his wife/A2, to the Investigating Officer and that certain family properties were settled in favour of his wife and to substantiate the fact that his wife/A2 had agricultural income, he had sought for documents from the MRO, under the RTI Act. He would further submit that the MRO had issued documents to show that the agricultural income of the wife/A2 of the Petitioner/A1 was Rs.54,20,700/- for the period from 2005-2006 to 2009-2010 and that since those documents are of sterling quality, he had filed the petition before the Trial Court, to accept those documents as additional grounds for deciding the discharge petition. He would rely on the decision of the Honourable Supreme Court reported in 2018 2 SCC 93 (Nitya Dharmananda and another Vs. Gopal Sheelum Reddy).

4. On the other hand, the learned Special Public Prosecutor for the Respondent would contend that at the stage of framing charges, the Trial Court need not rely on any external material and the Rule is that at the time of discharge petition, the Trial Court has to look into the final report and the materials filed along with the final report and nothing more

than that. He would further contend that if the accused wants to rely upon a document, it should be permitted to be done only in the course of trial and that even in the decision cited supra relied on by the learned counsel for the Petitioner/A1, the Apex Court has held that the Trial Court is not debarred from summoning and relying upon any external document, if it is satisfied that the material is of sterling quality and it had been withheld by the Prosecution and was not a part of the charge sheet and further it should have a crucial bearing on the issue of framing charge. He would further contend that in so far as the case on hand is concerned, there are ample materials other than the documents sought to be considered for framing charges and that the petition for discharge has been pending from the year 2013 and the present petition raising additional grounds, in which the impugned order was passed, was filed in the year 2014. He would submit that the Trial Court, observing that the documents sought to be relied on were not at all in existence as on the date of filing of the charge sheet and that they had been obtained subsequent to the laying of the charge sheet on 24.12.2013, had rightly dismissed the petition to accept the MRO documents. He would further submit that the Trial Court had also held that a roving or fishing enquiry about the merits of the case cannot be done at the stage of discharge petition and he would rely on the decision of the Three Judges Bench of the Honourable Supreme Court reported in 2005 1 SCC 568 (State of Orissa Vs. Debendra Nath Padhi) , wherein it was held that at the time of framing charge, the Trial Court cannot consider any material filed by the accused.

5. This court heard the submissions of the learned counsel on either side, considered their rival submissions and perused the impugned order, including the relevant authorities.

6. Even in the decision reported in 2018 2 SCC 93 (Nitya Dharmananda and another Vs. Gopal Sheelum Reddy), relied on by the learned counsel for the Petitioner/A1, in paragraph 8, it has been held thus:- सत्यमेव जयते

"8. Thus, it is clear that while ordinarily, the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of charge, but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It does not mean that the defence has a right to invoke Section 91 Cr.PC. dehors the satisfaction of the court, at the stage of charge."

7. It is clear from the above said decision of the Honourable Supreme Court that the trial is not debarred from summoning and relying upon a document, only if the Court is satisfied that the material is of sterling quality and that it has been withheld by the Investigating Officer and further it has been held that it does not mean that the defence has a right to invoke Section 91 of Cr.PC de hors the satisfaction of the Court at the stage of framing charge.

8. In 2005 1 SCC 568 (State of Orissa Vs. Debendra Nath Padhi), of the Honourable Supreme Court, has held that the necessity or desirability of the documents would have to be seen with reference to the stage when a prayer is made for production and that it would not arise at the stage of framing charges.

9. In the case on hand, a perusal of the impugned order shows that the documents sought to be accepted and considered by the Trial Court were not even in existence as on the date of filing the charge sheet and thereby, the Trial Court had rightly rejected the prayer of the Petitioner/A1, stating that it is not the case that the materials were available with the Investigating Officer and that they were not made part of the charge sheet. Further, as rightly held by the Trial Court, the documents sought to be annexed do not have a crucial bearing on the issue of framing charge and thereby, the decision cited above by the learned counsel for the Petitioner/A1 cannot be made applicable to the case on hand. This Court also finds no infirmity or illegality in the impugned order, warranting interference by this Court. The learned Trial Judge is reminded that the main case is of the year 2013 and the petition for discharge is pending from 2013. The Trial Judge shall accord priority to the case.

10. For the reasons stated above, this Criminal Original Petition is dismissed.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Superintendent of Police,
SPE/CBI/ACB/Chennai.

2.The XII Additional Special Court
for CBI Cases at Chennai.

3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.K.Suresh Babu, Advocate, SR.No.20358

Cr1.OP.No.5757 OF 2019

Kak(02/05/2019)



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