IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

CRL.RC.Nos.512 & 513 of 2018
and
CRL.MP.Nos.11418, 11419, 6133 & 6135 of 2018

Crl.R.C. No. 512 of 2018
TTV Dhinakaran ... Petitioner/Accused

Vs.

Assistant Director,
Enforcement Directorate, Government of India,
Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600006. ... Respondent /Complainant

Criminal Revision Petitions are filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the order dated 11.04.2018 made in Crl.M.P.No.780 of 2018 in EOCC No.84 of 2001 on the file of Additional Chief Metropolitan Magistrate (EO - II), Allikulam, Chennai - 600003 and to give relief as prayed for in the petition before the trial Court in exercise the power of the revision.

For Petitioner : Mr.A.Jenasenan
(in both petitions)

For Respondent : Mr.G.Rajagopalan
(in both petitions) Additional Solicitor General of India
Assisted by Ms.G.Hema
Special Public Prosecutor

Crl.R.C. No. 513 of 2018

TTV Dhinakaran ... Petitioner

Vs.

Assistant Director,
Enforcement Directorate, Government of India,
Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600006. ... Respondent

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For Petitioner : Mr.A.Jenasenan
(in both petitions)

For Respondent : Mr.G.Rajagopalan
(in both petitions) Additional Solicitor General of India
Assisted by Ms.G.Hema
Special Public Prosecutor

COMMON ORDER

Heard Mr. A.Jenasenan, Learned Counsel for the Petitioner and Mr. G.Rajagopalan, Learned Additional Solicitor General of India assisted by Ms. G.Hema, Learned Special Public Prosecutor and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is the accused in E.O.C.C. No. 27 of 1996 and E.O.C.C. No. 84 of 2001 before the Additional Chief Metropolitan Magistrate, EO-II, Chennai (hereinafter referred to as 'the Trial Court' for short). He had earlier made an application bearing S.R. No. 2 of 2006 in E.O.C.C. No. 84 of 2001 under Sections 173(2) and 173(8) of Cr.P.C. to hold the case in E.O.C.C. No. 84 of 2001 for the reason that it cannot be tried as a separate case in addition to E.O.C.C. No. 27 of 1996. The said Petition was dismissed by the Trial Court by order dated 19.01.2007, which was challenged by the Petitioner in Crl.R.C. No. 216 of 2007 before this Court. After hearing both sides, this Court by order dated 20.10.2010 in Crl.R.C. No. 216 of 2007, held as follows:-

> "11. As stated above, E.O.C.C. No. 84 of 2001 cannot be said to be not maintainable. But, there is nothing wrong in trying these cases, i.e., E.O.C.C. Nos. 84 of 2001 and 27 of 1996 together, though it is brought to the knowledge of this Court by the Learned Special Counsel for the respondent that already 15 witnesses were examined in C.C.No.27 of 1996. It appears that charges are not yet framed and this being warrant cases instituted otherwise than on a police report, after framing the charges also, the accused may cross-examine the witnesses and the prosecution also may examine the other witnesses. In E.O.C.C. No. 84 of 2001, as per the

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complaint, only 3 witnesses are cited.

12. Therefore, this Court feels that at this stage, it is open to the petitioner/ accused to file an application before the Additional Chief Metropolitan Magistrate, E.O.III, Egmore, Chennai seeking to try together both the cases, i.e. E.O.C.C. Nos. 27 of 1996 and 84 of 2001. If any such application is filed by the revision petitioner, the learned Additional Chief Metropolitan Magistrate, E.O.II, Egmore, Chenani shall pass appropriate orders. With the above observation, the Criminal Revision case is dismissed. Consequently, the connected Miscellaneous petition is closed."

3. The Petitioner then filed Crl.M.P. No. 2052 of 2010 in the Trial Court to direct the Respondent to take appropriate steps to consolidate both the complaints in E.O.C.C. Nos. 27 of 1996 and 84 of 2001 as one case in terms of the aforesaid order passed by this Court. The Trial Court by order dated 27.01.2011 rejected that Petition holding that the two complaints are based on separate transactions involving different companies each constituting distinct offences not having any nexus to each other. The Petitioner challenged that order in Crl.R.C. No. 289 of 2011 before this Court, which was disposed by order dated 11.10.2011 stating as follows:-

"6. Learned Senior Counsel are in agreement with this Court that towards avoidance of unnecessary petition and further protraction of proceedings before the Court below, this Court may direct that the case in E.O.C.C. Nos. 27 of 1996 and 84 of 2001 be tried together.

7. In the above circumstances and in exercise of powers under Section 482 Cr.P.C. this Court directs the Additional Chief Metropolitan Magistrate, E.O.II, Egmore, Chennai to try together both cases, i.e., E.O.C.C. Nos. 27 of 1996 and 84 of 2001.

8. This Court notices that proceedings in C.C. No. 27 of 1996 have not been completed till date despite the direction of this Court requiring the court below to expedite the trial in the case as expeditiously as possible and more particularly within a period of six months from the date of receipt of a copy of the order in Crl.R.C.No. 717 of 1997 dated 12.09.2008.

9. Considering the above aspect, this Court directs the Court below to dispose of both E.O.C.C. Nos. 27 of 1996 and 84 of 2001 within a period of six months from the next date of hearing i.e. 28.10.2011. It is expected that the court below will dispose the cases without seeking further extension of time for completion thereof. Connected miscellaneous petitions are closed. Criminal revision case is disposed of accordingly."

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In pursuance thereof, application in Crl.M.P. No. 780 of 2018 had been made by the Petitioner before the Trial Court to try both cases in E.O.C.C. Nos. 27 of 1996 and 84 of 2001 together, which was dismissed by order dated 11.04.2018 stating as follows:-

> " Heard, Documents perused.
>
> This Petition is filed by the Accused, with the prayer to pass an order so as to try both the cases E.O.C.C. Nos. 27 of 1996 and 84 of 2001.
>
> For this same prayer, the accused had earlier filed a Petition before this Court, and it was taken on file and numbered as Criminal M.P. No. 2052 of 2010 in E.O.C.C. No. 84 of 2001 by this Court.
>
> After hearing arguments on both sides and considering the averments and objections on both sides, this Court has dismissed that Petition in Criminal M.P. No. 2052 of 2010 dated 27.01.2011.
>
> It is clear that, the Accused had already raised the plea of joint trial and this prayer was dismissed in a detailed order. This Accused not file Revision Petition against that order.
>
> It is clear that a prayer of joint trial is already submitted and rejected by this Court. Hence instead of preferring for the Revision Petition the Accused cannot file this Petition for the same prayer. Hence it is not maintainable.
>
> For the reasons stated, this Petition is dismissed since it is not maintainable."

The aforesaid order is challenged in Crl.R.C.No. 512 of 2018 before this Court.

4. It also requires to be noticed at this stage that in the interregnum, the Petitioner had filed Crl.M.P. No. 2755 of 2017 in E.O.C.C. No. 27 of 1996 before the Trial Court for production of certain documents, but the same was rejected by order dated 08.12.2017, which the Petitioner has challenged in Crl.R.C. No.301 of 2018 before this Court. It is informed that an order dated 25.06.2018, this Court allowed that Revision Petition and the Respondent has preferred Special Leave Petition (Criminal) Diary No. 2126 of 2019 before the Hon'ble Supreme Court of India against that order in which by order dated 18.02.2019, it has been held as follows:-

> "Heard the learned counsel for the petitioner and perused the relevant material.
>
> Delay condoned,
>
> Exemption from filing certified copy of the impugned order is granted.
>
> Issue notice, returnable in six weeks.

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Until further orders, there shall be stay of the trial."

At the time of filing Crl.M.P. No. 780 of 2018 before the Lower Court, the Petitioner had filed another application in Criminal M.P. No. 779 of 2018 to stay the proceedings until the stay of the proceedings in E.O.C.C. No. 27 of 1996 comes to an end by passing the final order in Crl. R.C. No. 301 of 2018 by this Court. As that application was dismissed as not maintainable by order dated 11.04.2018, the Petitioner has preferred Crl.R.C. No. 513 of 2018 under Section 397 read with 401 of Cr.P.C. before this Court.

5. It is further stated that after the filing of these Revision Petitions, the proceedings in E.O.C.C. No. 27 of 1996 and E.O.C.C. No. 84 of 2001 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences-II), Chennai have been transferred to the Special Court for Trial of cases relating to MPs and MLAs, which is now the 'Trial Court' to proceed with those cases.

6. As would be evident from the aforesaid narration of facts, the correctness of the orders dated 11.04.2018 in Crl.M.P. Nos. 779 and 780 of 2018 by the Trial Court is challenged in these Revision Petitions. On a perusal of the order passed in Crl.M.P. No. 780 of 2018, it is apparent that the order dated 11.10.2011 in Crl.R.C. No. 289 of 2010 passed by this Court directing the Trial Court to try together both cases i.e. E.O.C.C. Nos. 27 of 1996 and 84 of 2001, has not been taken note. Accordingly, that order, which cannot be sustained, is set aside and the Trial Court is directed to try together both cases i.e. E.O.C.C. Nos. 27 of 1996 and 84 of 2001 in terms of the earlier order passed by this Court.

7. It is brought to the notice of this Court by the Learned Additional Solicitor General of India appearing for the Respondents that under the guise of giving effect to the orders passed by this Court, the Petitioner is attempting to re-agitate the claim for consolidating both cases, which relief has been rejected consistently by the Trial Court as well this Court. It is reiterated that the Petitioner cannot seek for any consolidation of both cases.

8. Insofar as Crl.R.C. No. 513 of 2018 is concerned, having regard to the fact that the Petitioner in Crl.M.P. No. 779 of 2018 had sought for stay of proceedings till the passing of final order in Crl.R.C. No. 301 of 2018, which has been subsequently disposed by this Court by order dated 25.06.2018, it has become infructuous. However, in view of the order dated 18.02.2019 in S.L.P. (Criminal) Diary No. 2126 of 2019 passed by

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the Hon'ble Supreme Court of India, there has been stay of trial. It is open to the Respondent to obtain necessary clarification from the Hon'ble Supreme Court of India for conduct of further proceedings in the trial of the cases before the Trial Court.

9. The Criminal Revision Petitions are disposed on the aforesaid terms. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.Assistant Director,
Enforcement Directorate, Government of India,
Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600006.

2.The Additional Chief Metropolitan Magistrate (EO-II)
Allikulam,Chennai-3.

Copy to,

1.Thre Special Court for Trial of cases relating to
Mps and MLAs, Chennai.

2.The Section Officer,
Criminal Section, High Court, Madras.

+1cc to M/s.A.Jenasenan, Advocate Sr.106404
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