

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 06.09.2019
Pronounced on : 17.10.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.18822 of 2019
and
Cr1.M.P.No.9599 of 2019

N.Raghuvulu Naidu ... Petitioner/Accused

Vs.

The State,
Rep. by the Inspector of Police,
Central Bureau of Investigation,
ACB, Chennai. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to order transfer of all the records in C.C.No.6282 of 2017 now on the Additional Chief Metropolitan Magistrate, Egmore at Chennai to Court of learned XIII Additional Special Judge for CBI Cases, Chennai and to hold the trial of the same together with the C.C.No.20 of 2017.

For Petitioner : Mr.T.Sivananthan for
M/s.Sivanandh & Associates

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor
(CBI Cases)

ORDER

The petitioner, who is an accused in C.C.No.6282 of 2017 filed this petition seeking transfer of the case to the file of the XIII Additional Special Judge for CBI Cases, Chennai and to hold trial together with C.C.No.20 of 2017.

2.The contention of the learned counsel for the petitioner is that on source information, a case came to be registered in Crime No.CBI/ACB/CHENNAI in RC MA1 2015 A 0023 for the offence under Sections 7, 12, 13(2) r/w 13(1)(d) of Prevention of Corruption Act against the petitioner, who is a public servant. On completion of investigation, the respondent filed two final reports before two different Courts. One is C.C.No.6282 of 2017 and another is C.C.No.20 of 2017. In C.C.No.6282 of 2017, the petitioner is the single accused, who is facing trial for the offence under Section 420 of IPC before the learned Additional Chief Metropolitan Magistrate, Chennai, in which 83 witnesses were examined 177 documents were collected. As regards, C.C.No.20 of 2017, pending on the file of the XIII Additional Special Judge, CBI Cases, Chennai, the petitioner is facing trial along with three others, who are the family members of late M.Manuneethi Cholan, former Registrar of Companies for the offence under Sections 120(B) of IPC r/w 12 of the Prevention of Corruption Act, 1988, in which there are 128 witnesses were examined and 246 documents were collected.

3.The learned counsel for the petitioner would further submitted that for fair and impartial trial, the cases which are presently being tried before two different Courts, in the interest of general convenience of parties and witnesses and interest of Justice, both cases are to be tried together in one Court. He would further submitted that both the cases arise out of common FIR and relying upon the principles of Section 223(D) and 269 of Cr.P.C., he made his contention. The witnesses are common in both the cases. If common witnesses are cross-examined in one case, the witnesses would become vulnerable and the prosecution would try to fill up the lacuna in this case.

4.Further, the prosecution would be burdened to conduct two different cases on common set of evidence before two different Courts and it would add up repitiation and confusion. The petitioner being an elderly person of 74 years have to attend both the cases would cause great hardship. Further, the learned counsel for the petitioner relied upon the following citations:-

"1.Essar Teleholdings Limited Versus Registrar General, Delhi High Court and others reported in (2013) 8 SCC 1.

2.HCL Infotech System Limited Versus Central Bureau of Investigation reported in (2016) 9 SCC 281."

The Judgments relied upon by the learned counsel for the petitioner are not applicable to the present facts and circumstances of the case.

5.The learned Special Public Prosecutor (CBI Cases) appearing for the respondent had filed a counter and made the submissions that on completion of the investigation, final report under Section 173(2) of Cr.P.C has been filed before the learned Principal Sessions Judge for CBI Cases, Chennai against the family members of public servant in C.C.No.20 of 2017 and trial in this case is in progress. During the course of investigation distinct offences committed by the late M.Manuneethi Cholan and his close associate, the petitioner came to light. Since, the prime accused died before filing final reports, the final report-II against the private individual ie., the petitioner herein for the offence under Section 420 of IPC have been filed before the learned Principal Special Judge for CBI Cases, Chennai. Subsequently, the final report-II has been transferred from the file of the Principal Special Judge for CBI Cases, Chennai to the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai, which has the Jurisdiction to try the offences dealing non Prevention of Corruption Act cases and the Court assigned C.C.No.6282 of 2017.

6.He would further submit that the plea of the petitioner that his rights have been deprived by examination of same witnesses in two different Courts is incorrect. The petitioner taking advantage of his old age tries to escape from the clutches of law. If the petitioner is cooperative with judicial proceedings, the trial process will be expedited and would be completed within a stipulated period. The petitioner has filed a transfer petition in Crl.O.P.No.25007 of 2017 before this Court seeking transfer of C.C.No.20 of 2017. This Court by order dated 23.11.2017 had transferred C.C.No.20 of 2017 from the file of the XIV Additional Court for CBI Cases, Chennai to the file of XIII Sessions Court for CBI Cases, Chennai. Likewise, the petitioner had filed Crl.O.P.No.26624 of 2017 seeking quashing of the proceedings in C.C.No.6282 of 2017 on the ground that there is no allegation of cheating in the transaction and there is no prima facie material to try the petitioner after the demise of the main accused M.Manuneethi Cholan. This Court by order dated 05.12.2017, dismissed the quash petition, by giving a finding that prima facie material is available for framing charges against the petitioner.

7.The petitioner had been filling one petition or other and successfully stalling the proceedings of both the cases. This petition is yet another ploy to further delay the progress of C.C.No.6282 of 2017. He would further submit that both the cases in C.C.No.20 of 2017 and C.C.No.6282 of 2017 are different and for distinct offences committed by the petitioner. Hence, two separate final reports have been filed. Both the Courts are situated in Chennai and attending to the cases would not cause any impediment or harassment to the petitioner.

8.Heard the rival submission and perused the materials available. It is seen that both C.C.No.20 of 2017 and C.C.No.6282 of 2018 arise out of common FIR and some of the witnesses are common as well some of the documents. But the offences are separate and distinct and does not form in one series of act connected together as to form same transaction and it would not fall under Section 223 of Cr.P.C.

9.The petitioner now seeks transfer of C.C.No.6282 of 2017 to be tried along with C.C.No.20 of 2017, pending on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai. Though there are common witnesses and documents in both the cases it alone would not be sufficient to say that the offence arise out of same transaction and committed.

10.Both the offences are distinct and separate, hence the respondent police filed separate final reports. Both the cases arise out of common FIR and the offences are not similar. The final report-II was originally filed before the Special Court for CBI Cases. Due to the death of the public servant the case was transferred to the Additional Chief Metropolitan Magistrate, Egmore, Chennai and commonnity of witnesses, documents are not in dispute.

11.In view of the same, it would be just fair and proper to decide both the cases together by the same Court, irrespective of the nature of the offence involved. In any event, the trial Court shall not record common evidence or substitute the evidence recorded in one case as evidence in other case and shall not consider the evidence recorded in one case in the other case and to pass separate Judgment.

12.Hence, C.C.No.6282 of 2017 is hereby withdrawn from the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai and transfer the same to the file of XIII Additional Special Judge for CBI Cases, Chennai to be tried simultaneously along with C.C.No.20 of 2017. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (Insp cell)

/true copy/

Sub Asst. Registrar

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To

- 1.The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.
- 2.The XIII Additional Special Judge for CBI Cases,
Chennai.
- 3.The Inspector of Police,
Central Bureau of Investigation,
ACB, Chennai.
- 4.The Public Prosecutor,
High Court Madras.

+1 cc to Mr.Sathiamurthy Advocate sr87484

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