

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.10.2019
CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.24177 of 2019

S.Thiagarajan

... Petitioner/LW-3

Versus

1.State represented by,
Inspector of Police,
Vigilance & Anti Corruption,
Head Quarters, Chennai-600 028.

... 1st Respondent/Complainant

2.K.Sivamani
3.Parasmal H Jain
4.Vijayaraj H Jain
5.Madanlal H Jain
6.Anitha Devi
7.P.Rajendran

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the Special Judge for Cases Under Prevention of Corruption Act, Chennai to dispose of the case in C.C.No.6 of 2016 within a stipulated time frame.

For Petitioner : M/s.K.Balasubramaniam

For R1 : M/s.M.Prabhavathy,
Additional Public Prosecutor

For R3 to R6 : M/s.G.Shivasurya

ORDER

The petitioner, who is LW3/PW5 in C.C.No.6 of 2016 has filed this petition seeking direction to the learned Special Judge for exclusive trial of PC Act Cases, Chennai to dispose C.C.No.6 of 2016 within in a stipulated time frame.

2.There are totally six accused in this case, who are charged in Crime No.4 of 2014 and facing trial for the offence under Sections 13(2) r/w 13(1)(d) of Prevention of Corruption

Act, 1988 and 109 IPC. The prosecution on completion of investigation in Crime No.4 of 2014 had filed charge sheet against the accused, citing LW1 to LW41 and several documents. During pendency of trial in C.C.No.6 of 2016, the 1st accused in this case filed a quash petition in Crl.O.P.No.1396 of 2017 before this Court. This Court by order dated 25.10.2017 dismissed the same.

3.LW2, the mother of the petitioner/LW3 has filed a Crl.O.P.No.21285 of 2018 to expedite the trial in C.C.No.6 of 2016. This Court by order dated 31.08.2018 directed the trial Court to complete the same within a period of six months. Despite specific direction of this Court, so far the trial Court has examined only LW1, the Joint Commissioner of Police, East Zone, Greater Chennai Police, Egmore and LW2, the mother of the petitioner. Hence, the petitioner filed a Crl.O.P.No.10960 of 2019 to transfer the C.C.No.6 of 2016 from the Special Court for the Cases Under PC Act, Chennai to any other Court. When the Crl.O.P.No.10960 of 2019 was taken up for hearing, the learned counsel sought permission of this Court to withdraw the petition. While disposing the petition on 30.04.2019, this Court had observed, due compliance of order passed by this Court in Crl.O.P.No.21285 of 2018, dated 31.08.2018. This Court dismissed the Crl.O.P.No.10960 of 2019 as withdrawn and further directed the trial Court to complete the trial within six months in due compliance of the order of this Court dated 31.08.2018 in Crl.O.P.No.21285 of 2018. According to the petitioner, the trial Court not completed the trial within the stipulated time, since the accused were adopting dilatory tactics and the 1st respondent is not producing the witnesses before the trial Court.

4.The daily status in C.C.No.6 of 2016 (e-Court) is filed. The summons to the petitioner/LW3 was served and due to his absence, witness warrant was issued, which could be seen from the proceedings dated 18.03.2019. Thereafter, on 27.03.2019, the trial Court recalled the witness warrant of LW3 and posted the case to 02.04.2019. On 02.04.2019, LW3 was present and witness was bind over. On 12.04.2019, the learned Special Public Prosecutor filed a memo that LW3 is not co-operating with the prosecution. Further, the defacto complainant filed a petition before Trial Court and Trial Court permitted the defacto complainant to assist the prosecution and one Ms.Anuratha Advocate filed vakalath for defacto complainant. Thereafter, the said Anuratha made representation that she is the person to represent the defacto complainant and not another counsel who appeared on 12.04.2019 claiming to represent the defacto complainant. Thereafter on 18.05.2017, discharge petition was filed by the 2nd accused. Another petition under

Section 301 Cr.P.C was filed. On 20.06.2019, one Mr.S.Rajesh, Advocate filed change of vakalath for defacto complainant.

5.In this background, when the case came up before this Court on 12.09.2019, the learned Additional Public Prosecutor stated that summons was served to the petitioner/LW3 and he is to be examined on 09.09.2019. Thereafter, on 09.09.2019 LW3 was examined as PW5 in part for continuation of chief examination, the case was adjourned. Thereafter, the petitioner appeared and stated that he has some throat infection, unable to depose and all the accused to appear before the Trial Court for identification. Thereafter, it is seen that the petitioner has been examined in detail, on 30.09.2019, the lower Court had specifically allotted the morning session for examination of this witness and thereafter the case was taken up at about 11.40 p.m., the counsel assisting the witness stated that he had a case before High Court and the Trial Court case took up at 12.30 p.m. At about 12.30 p.m the petitioner represented before the Trial Court the case may be taken up and he was ready to depose. The case was taken up at about 12.45 p.m and the chief examination continued till 02.00 p.m. Thereafter, the case was passed over and to be taken after lunch. At about 03.30 p.m when the case was taken up the chief-examination of the petitioner continued. At about 04.20 p.m the counsel assisting the prosecution namely Mr.Jayakumar Advocate due to high blood pressure fainted in the open Court and he was given first aid. PW5 made a request that he is the only person who knew the Doctor of his counsel, hence the court accepted the request made by PW5 and asked him to take his counsel to Doctor and the chief examination could not be continued. Thereafter, the case was posted for continuation of Chief examination to 04.10.2019.

6.Though this Court listed the above Criminal Original Petition periodically following the trial Court proceedings, the petitioner/PW5 seems to drag the case, by adopting non co-operative attitude in completing his examination, thereby stalling the completion of trial, within stipulated time on the contrary petitions are filed before this Court.

7.This Court is not satisfied with the conduct of the petitioner/PW5. The learned counsel for the petitioner expressed his displeasure and non-cooperative attitude of the petitioner and sought permission of this Court to withdraw the petition and made an endorsement to that effect.

8.This Court finds that the petition by the petitioner to complete the trial within stipulated time seems to be without valid reason and he is contributing for the delay.

9.With the above observations, this Criminal Original Petition is dismissed as withdrawn.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Special Judge,
(Special Court for cases under Prevention of Corruption Act),
Chennai.

2.The Inspector of Police,
Vigilance & Anti Corruption,
Head Quarters,
Chennai-600 028.

3.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.K.Balasubramaniam, Advocate sr.84242

CRL.O.P.No.24177 of 2019

pvs(co)
nr 13/11/2019