

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

DATED 30.09.2019

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL.R.C.Nos.1001 and 1002 of 2019

&

Crl.M.P.Nos.14058 and 14055 of 2019

S.V. Nagaraja Reddy .. Petitioner/Accused
in both revisions

Vs

State, represented by
Inspector of Police,
CBI/BS & FC/Bangalore
RC-5 (E)/2007 ..Respondent/Complainant
in both revisions

Prayer in Crl.R.C.No.1001 of 2019: Criminal Revision Petition filed under section 397 r/w.Section 401 of Cr.P.C., 1973, praying to call for the records in connection with the impugned order dated 29.08.2019 passed in Memo Sr.No.4051 of 2019 in C.C.No.3 of 2009, pending on the file of the learned XI Addl. Special Judge for CBI Cases, Chennai and to set aside the same.

Prayer in Crl.R.C.No.1002 of 2019: Criminal Revision Petition filed under section 397 r/w.Section 401 of Cr.P.C., 1973, praying to set aside the charge dated 5.7.2019 framed against the petitioner in C.C.No.3 of 2009, pending on the file of the learned XI Additional Special Judge for CBI Cases, Chennai.

For Petitioner in
both cases : Mr. Sathish Parasaran S.C for
Mr.R.Parthasarathy

For Respondents : Mr. K.Srinivasan,
Spl. Public Prosecutor, CBI Cases

ORDER

The petitioner was originally arrayed as A4 in C.C.No.3 of 2009. The point raised in CrI.R.C.No.1001 of 2019 is that the petitioner who was originally arrayed as A4 in the charge sheet in respect of C.C.No.3 of 2009 filed a discharge petition in CrI.M.P.No.1400 of 2009.

2. The trial court, by its order dated 11.09.2009, discharged the petitioner. Thereafter, trial Court framed charges against the other accused, deleting the name of the petitioner re-arranging the ranks against the remaining six accused on 23.11.2016.

3. In the meanwhile, CBI preferred criminal revision case against the order of discharge of the petitioner in CrI.R.C.No.1139 of 2009 and this Court, by order dated 22.6.2018 set aside the order of discharge, with a finding that the trial court committed error in discharging the petitioner from the offence and a prima facie case has been made out as against the petitioner and others and to frame charges on the petitioner and to proceed with the case in C.C.No.3 of 2009.

4. Thereafter, the petitioner approached the trial court filed a memo in Sr.No.4749 of 2018 in C.C.No.3 of 2009 on 16.10.2018 with the plea to the trial court to proceed with C.C.No.3 of 2009, since the evidence of PW1 to 3 were recorded in the absence of the petitioner, the petitioner to be permitted to recall and examine the said witnesses, if necessary. The said memo was rejected by the trial court, vide its order dated 7.1.2019.

5. In the meanwhile, the trial court had referred the same to the Principal Special Judge, CBI Cases for splitting up the case and the same was pending. Aggrieved by the said order dated 7.1.2019, the petitioner had filed CrI.O.P.No.2216 of 2019, wherein, this Court, by order dated 29.1.2019, directed the trial court to proceed with the case without splitting up the case and to frame separate charge in respect of the petitioner. The trial court framed charge against the petitioner on 5.7.2019. In the charge, the petitioner was shown as A4 as per the original charge sheet before petitioner was discharged. Hence it created Anomaly whether it is N.Srikanth is A4 as per charge dated 23.11.2016, or petitioner is A4 as per charge dated 5.7.2019. Thereafter in C.C.No.3 of 2009, two persons shown as A4. Hence prosecution filed Memo Sr.No.4051 of 2018 on 16.7.2019, to rearrange the ranks of the accused.

6. The prosecution memo before the trial court in Sr.No.4051 of 2018 in C.C.No.3 of 2009 was to re-arrange the accused to their original array as mentioned in charge sheet and the trial court on considering the same, had passed the order dated 29.08.2019 to rearrange the accused as A1 to A7, on the other hand to retain the separate charges framed against the petitioner as A4 as per order of High Court in Crl.O.P.No.2216 of 2019 which is under challenge now.

7. The contention of the petitioner is that during the period between the petitioner being discharged on 11.9.2009 and thereafter the said order being set aside on 22.6.2018, three witnesses have been examined and documents marked as exhibits, out of which, two witnesses evidence have been completed and with regard to PW3, he is in witness box and chief examination has to be continued further and documents to be marked. Though the petitioner originally was arrayed as A4, after his discharge and on framing of charges dated 23.11.2016, one N.Srikanth had been arrayed as A4 and charges have been framed against him and he has been referred as A4 in the evidence recorded so far. Now if the petitioner is to be referred as A4, confusion would arise, since the witnesses have identified and spoken to about Srikanth as A4 and if the lower court to re-array the rank of accused, further confusion would arise as to whether A4 referred in the evidence would be attributed to this petitioner or N.Srikanth. The petitioner contended that it is a case of conspiracy and the petitioner is the Managing Director of A6 and no confusion or anomaly would arise and it would not affect the prosecution case in any manner, if the petitioner is arrayed/referred as A7. The charges fullfill legal condition and requirement for the offence charges, there is no factual error or omission.

8. The Special Public Prosecutor, CBI Cases, submits that originally four charges have been framed against A1 to A6 as per order dated 28.11.2016. Two charges have been framed as against petitioner as on 5.7.2019. On perusal of the charges, it is found that the first charge is common and identical likewise, charge No.3 as regards A1 to A6 and 2nd charge against the petitioner are identical. In view of the same, no prejudice would be caused to both the prosecution as well as to the petitioner if the rank of the petitioner/accused are not disturbed and this petitioner is shown as A7. It would also prevent loss of time in proceeding with the trial. In view of the same, this Court directs the trial court to arraign this petitioner as A7 instead of A4 and proceed with the trial .

9. In view of the above, the order passed by the trial court in Memo Sr.4051 of 2019 dated 28.08.2019 is modified directing the trial court to array the petitioner as A7 instead of A4, charges framed against A1 to A6 on 23.11.2016 and charges framed against the petitioner on 5.7.2019 to co-exist referring the petitioner as A7.

10. In view of the same, CrI.R.C.No.1001 of 2019 is allowed with the above direction. In view of the order passed in CrI.R.C.No.1001 of 2019, no separate order is required to be passed in CrI.R.C.No.1002 of 2019. Consequentially connected CrI.M.P.Nos.14058 and 14055 of 2019 are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msr

To

1.The XI Additional Special Judge
CBI Cases, Chennai.

2.The Inspector of Police,
CBI Cases, Chennai.

3.The Public Prosecutor,
High Court, Madras.

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

+2cc Mr.R.Parthasarathy, Advocate SR.83727 &83728/19

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RJI (CO)
CB(21/11/2019)

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