



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P No.5826 of 2020

WEB COPY

M/s.Kasturi @ Sons Ltd.,
Represented by its Director
Mr.Ramesh
S/o.S.Rangarajan
859 & 860, Anna Salai,
Chennai

..Petitioner/defacto complainant

vs.

1.State by
The Inspector of Police,
Central Crime Branch,
Chennai.

2.K.C.Palanisamy (Ex.MP)

3.John @ Boscoi Rajan

...Respondents/complainant/
Accused

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crl.M.P No.1506 of 2020, in C.C No.69 of 2019 from the file of the Additional Special Court for Cases Related to Elected Members of Parliament and Member of Legislative Assembly of Tamilnadu, Chennai and prays to modify the order and to expunge the remarks made in entire Paragraph 10, of the order passed in Crl.M.P No.1506 of 2020 dated 02.03.2020 by the Additional Special Court for Cases Related to Elected Members of Parliament and Member of Legislative Assembly of Tamilnadu, Chennai in C.C No.69 of 2019 and permit the petitioner to engage a Senior Counsel.

For Petitioners : Mr. N.R.Elango, Senior Counsel for
M/s.Ganesh Rajan

For Respondents : Mr.Krithika Kamal for R1
Government Advocate (Criminal Side)



ORDER

This petition has been filed to expunge the remarks of the learned trial Court found in para 10 of the order dated 02.03.2020.

2. A petition has been filed under Section 301(2) of Cr.P.C to engage a lawyer by the de-facto complainant. While allowing the above application, the trial Court has observed in para 10 which reads as follows:

"10. However, on perusal of records it is learnt that, the Senior Counsel Mr.R.Shanmugasundaram seems to have appeared on behalf of the 2nd Respondent/Accused herein before the Hon'ble High Court in CrI.O.P No.10205/2008 for Anticipatory Bail. Now, the Learned Senior Counsel Mr.R.Shanmugasundaram is appearing before this Court on behalf of the Petitioner/De-facto Complainant. In such circumstances, appearance of the Learned Senior Counsel Mr.R.Shanmugasundaram in this case on behalf of the Petitioner/De-facto Complainant could be the conflict of interest.

3. Though the de-facto complainant is entitled to engage a counsel of his choice to assist the prosecution, in para 10, it has been observed that since the Senior Counsel has already appeared for the accused in the anticipatory bail petition in CrI.O.P No.10205 of 2008, there will be a conflict of interest.

4. Whereas, the learned Senior Counsel appearing for the petitioner submitted that the observation of the learned trial Court is erroneously wrong. In fact, the learned Senior Counsel who sought to assist the de-facto complainant has originally appeared for the de-facto complainant in the anticipatory bail petition, wherein the anticipatory bail petition, the de-facto complainant sought to be impleaded as intervenor. Only on behalf of the intervenor he has appeared in the above petition namely, CrI.O.P No.10205 of 2008. Hence, he prays to expunge the remarks made in para 10 of the order of the trial Court.

5. The learned Government Advocate appearing for the 1st respondent has stated no objection in expunging the remarks made in para 10 of the order of the trial Court.

6. This Court has perused the order of this Court passed in CrI.O.P No.10205 of 2008. The same made it very clear that the learned Senior Counsel referred in para 10 of the order has



appeared only on behalf of the intervenor and not on behalf of the accused. Therefore, the observation of the learned trial Judge on the face of the record is not correct. Accordingly, such observation recorded in para 10 of the order dated 02.03.2020 by the trial Court is liable to be expunged.

7. In the result, this Criminal Original Petition is allowed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

uma
To

1.The Additional Special Court for Cases Related to Elected Members of Parliament and Member of Legislative Assembly of Tamilnadu, Chennai

2. The Inspector of Police,
Central Crime Branch,
Chennai.

3.The Public Prosecutor
High Court of Madras.

+1 cc to Mr.Ganeshrajan Advocate sr22572

Cr1.O.P.No.5826 of 2020

aa14/07/2020