

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.14261 of 2020

B.Subramaniam,
S/o.Reddy

..Petitioner/Accused

/versus/

The State represented by
Inspector of Police,
SPE/CBI/ACB Chennai,
Crime No.20(A)/2007

..Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records of pending proceedings in C.C.No.35 of 2008 on the file of the XI Additional Special Judge for CBI Special Cases, Chennai and quash the same.

For Petitioner : Mr.V.Krishnakumar

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor

ORDER

The petitioner has filed this quash petition to quash the charges and proceedings in C.C.No.35 of 2008, pending on the file of the XI Additional Special Judge for CBI Special Cases, Chennai.

2. The learned counsel for the petitioner submitted that the petitioner is A1 in the above case, who is facing trial along with A2/ R.Murugan and the Trial Court after investigation and examining the witnesses L.W.1 to L.W.32, had framed charges for the offence under Sections 120B r/w 420, 467 and 468 r/w 471 IPC and 13(2) r/w 13(1)(d) of PC Act, 1988 on 10.12.2008. Thereafter, the petitioner and A2 participated in the Trial. A2 defended himself till the completion of the prosecution witnesses. The Investigating Officer/P.W.5 - Ragu Kumar was examined in chief on 24.03.2015. Thereafter, A2 had filed the petition under Section 307 Cr.P.C before the Trial Court on 02.02.2016 for becoming an approver following the procedures. The XII Additional Special Judge for CBI Cases has granted

tender of pardon to A2 on 22.12.2016 and A2 became prosecution side witness as L.W.33 and he was examined as P.W.27 on 04.02.2018. Later, when the case was posted for arguments, the petitioner found that the charges framed against the petitioner on 10.12.2008 is not altered, the approver who had been examined as P.W.28 is still referred as A2.

3. He would further submit that the petitioner has filed a petition under Section 216 Cr.P.C in CrI.MP.No.7691 of 2019 before the IX Additional Special Court for CBI Cases, Chennai, to alter the charges already framed. The Trial Court on considering the submissions, by order dated 15.07.2020 had dismissed the petition filed by the petitioner with the observation that on 22.12.2016, tender of pardon was granted to A2 and A2 has been discharged from the charges and as far as C.C.No.30 of 2008 is concerned the charges remaining pending are only as against the A1, hence, there is no necessity arose to alter the charges under Section 216 of Cr.P.C.

4. Further, the learned counsel for the petitioner submitted that by substituting A2 as approver, the charges framed against A2/R.Murugan got cleared and there is no ambiguity and prejudice to the petitioner for the same. The only grievance of the petitioner is that the Court below has to frame the charges afresh if it decides to continue the trial. Further, he undertook that he will not cite the substitution as a reason and recall any of the witness and also undertook that he will not cause any delay in the proceedings and to complete his argument.

5. The learned Special Public Prosecutor has filed his counter and advanced his argument stating that on 30.04.2007, the case came to be registered by CBI for the offences under Sections 120B r/w 420, 467 and 468 r/w 471 IPC and 13(2) r/w 13 (1)(d) of PC Act, 1988, against the petitioner S.Subramanian, Executive Engineer, CPWD and others. The allegation in brief is that during the year 2005- 2006, the petitioner prepared detailed estimates for the development of Horticulture work along with boundary wall of GPRA Quarters, North Sector at Besant Nagar, Chennai. The petitioner abusing his official position and knowing that the rates quoted by A2 are exorbitant, allotted the works to A2. This caused a wrongful loss of Rs.5,59,122/- to the CPWD and corresponding wrongful gain to the accused.

6. He would further submit that on completion of investigation, charge sheet was filed against the petitioner and one R.Murugan/A2 and the same was taken on file in C.C.No.35/2008 and subsequently got transferred to XII Additional Special Court for CBI Cases, Chennai. On 22.12.2016, the A2 taken as approver after the chief examination of IO. He

further submitted that the case is at the stage of final argument. During the argument, the accused filed the petition to alter the charges. Now the case is at the stage of arguments. The P.W.25 had taken voluntary retirement and was relieved from his duties on 11.09.2013. Chief examination of investigation Officer PW-25 was completed on 24.05.2015. Subsequently, A2 filed petition on his own before the Court to become approver and the same was granted by this Court on 22.12.2016. Thus, the petition to re-frame the charges is filed not with a genuine intention and is done with ulterior reasons to delay the progress of the trial in the case. The defence has prolonged the case for nearly 11 years.

7. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor for the respondent.

8. Considering the rival submissions and perusal of the records produced, it is seen that CBI has registered the case on 30.04.2007. On completion of investigation, on 10.12.2008 charges framed against the petitioner/A1 and A2/Murugan under Sections 120B r/w 420, 467 and 468 r/w 471 IPC and 13(2) r/w 13 (1)(d) of PC Act, 1988. After the examination of P.W.25/Investigation Officer, A2/Murugan had filed petition for becoming an approver under Section 307 Cr.P.C before the Trial Court on 02.02.2016. Thereafter, the XII Additional Special Judge for CBI Special Cases had given tender of pardon to A2 on 22.12.2016. Thereafter, A2 become prosecution side witness L.W.33 and was examined as P.W.27 on 04.06.2018. The said witness was cross examined by A1 and subsequently Additional witnesses was also examined cross examined and the case was posted for questioning under Section 313 Cr.P.C and for defence witness and subsequently A1 reported that there is no defence witness, then the case was posted on 02.05.2019 for arguments, on several hearings from 08.03.2019 to 23.07.2019 the case was adjourned.

9. The learned Additional Public Prosecutor for the respondent in Lower Court advanced his argument in part on 30.07.2019. Thereafter the case was posted for further arguments on 07.08.2019. On that day, the petitioner filed the petition under Section 216 Cr.P.C and sought for alteration of the charges belatedly after the tender of pardon was granted on 22.12.2016. Thereafter, the trial had progressed for three years, later only on 07.08.2019 a petition under Section 216 Cr.P.C came to be filed.

10. This Court finds that substituting of A2/Murugan as approver in the charges would noway prejudice the petitioner. The Hon'ble Apex Court in the case of Santhakumari vs State of Jammu and Kashmir reported in (2011) 9 SCC 234, wherein it was held as under:

"17. Like all procedural laws, the Code of Criminal Procedure is devised to subserve the ends of justice and not to frustrate them by mere technicalities. It regards some of its provisions as vital but others not, and a breach of the latter is a curable irregularity unless the accused is prejudiced thereby. It places errors in the charge, or even a total absence of a charge in the curable class. That is why we have provisions like Sections 215 and 464 in the Code of Criminal Procedure, 1973."

11. In the case of Anant Prakash Sinha vs. State of Haryana reported in (2016) 6 SCC 105, the Hon'ble Supreme Court delineated the wide powers available to the trial Court under Section 216 Cr.P.C, to add or in alter charges at any stage prior to the pronouncement of judgment. In an instructive the Court held as under:

Form the aforesaid, it is graphic that the Court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the Court has not framed a charge to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 Cr.P.C."

12. In view of the same, the Hon'ble Apex Court has emphasised the principle under Section 216 Cr.P.C and it is an obligation to the Court to see no prejudice is caused to the accused and the accused to have a fair trial. In this case, this Court finds that there would be no prejudice to the petitioner/A1, if the A2/Murugan name is substituted as approver in the charges. This had occurred since charges in this case were framed on 10.12.2008 and the tender of pardon was granted to the A, later on 22.12.2016 on which day he has become as witness. In view of the same A2/Murugan to be referred as approver in the charges.

13. With the above observation, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar

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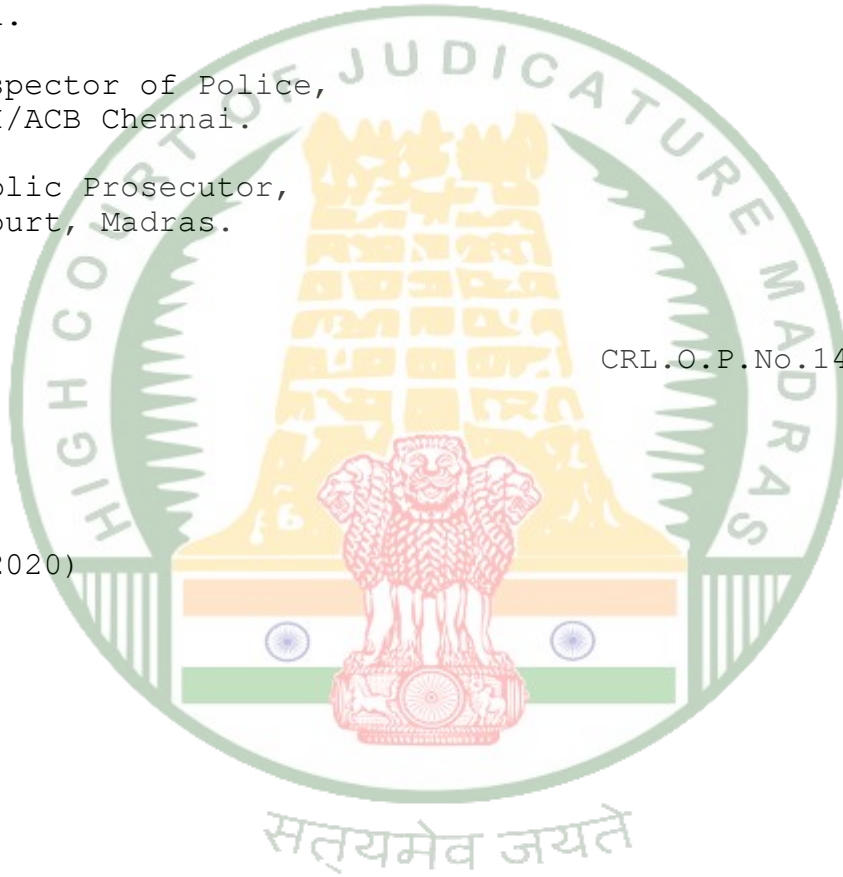
Sub Assistant Registrar

To

1. The XI Additional Special Judge for CBI Special Cases, Chennai.
2. The Inspector of Police, SPE/CBI/ACB Chennai.
3. The Public Prosecutor, High Court, Madras.

CRL.O.P.No.14261 of 2020

MG (CO)
RV(21/10/2020)



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