



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2020

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

CRL.O.P. (MD) .No.18877 of 2019

and

CRL.M.P (MD) No.11071 of 2019

A.M.Mujeeb @ Niyaz Khan @ Abdul Razaq .. Petitioner/Petitioner/
Accused

Vs.

The State Represented by
The Inspector of Police,
CBI, ACB, Chennai.

.. Respondent/ Respondent/
Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for records and set aside the order dated 18.11.2019 in Cr.M.P.No.1954 of 2019 in C.C.No.3 of 2006 on the file of the learned II Additional District Judge for CBI Cases, Madurai and direct the trial court to recall and re-examine the witnesses mentioned in the Cr.M.P.No.1954 of 2019.

For Petitioner : Mr.S.Poornachandran
For Respondent : Mr.N.Nagenthiran,
Special Public Prosecutor.

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 18.11.2019 in Cr.M.P.No.1954 of 2019 in C.C.No.3 of 2006 on the file of the learned II Additional District Judge for CBI Cases, Madurai and direct the trial court to recall and re-examine the witnesses mentioned in the Cr.M.P.No.1954 of 2019.

2. The petitioner is arrayed as an accused in C.C.No.3 of 2006, had filed a petition in Crl.M.P.No.1954 of 2019 under Section 311 of Cr.P.C., before the learned II Additional District Judge for CBT Cases, Madurai, to re-call P.W.2, P.W.4, P.W.8, P.W.9 P.W.10 and P.W.11.

3.The trial Court after perusal of the records dismissed the Crl.M.P.No.1954 of 2019 by order dated 18.11.2019. In the order of the lower Court, the evidence of the witnesses have been extracted and also the date of examination. Further, about the split up of the case from the mother case particulars have also been given. Further, the petitioner now agrees for examination of two witnesses, namely, P.W.8/Shaji Assistant General Manager in Canara Bank, Regional Office, Kollam. P.W.9/Zelesky, working as Officer, in Canara Bank, Circle Office, Madurai, retired from service and settled at D.No.7, Plot No.5, Shanthi Apartments, 1st Floor, Kannappan Nagar, 3rd Cross Street, Thiruvannmiyur, Chennai.



4.The learned Special Public Prosecutor opposed to re-call the witnesses by stating that this is the split up case from the mother case. The petitioner is an accused in C.C.No.9 of 2003, since he has been absconding, the case was split up as C.C.No.3 of 2006 from the mother case in C.C.No.9 of 2003, which was ended in conviction. He further submitted that the petitioner is only delaying the trial. The trial in advanced stage of arguments and heard in part. Further, by re-calling the witnesses again and again only causes harassment to the witnesses.

5.The learned counsel for the petitioner submitted that he has not cross examined P.W.8 and P.W.9. P.W.8 is the witness, who speaks about the inter branch advice (IBA), the documents have to be verified with. P.W.9/Officer, who was working in the Canara Bank, Tuticorin Branch, where the major part of the offence is said to have been taken place and this witness speaks about the entire case of the prosecution. Hence cross examination of these witnesses are imperative.

6.Considering the facts and circumstances of the case, the petitioner may be given one more opportunity to cross examine the witnesses. The witnesses P.W.8 and P.W.9 alone are permitted to be re-called and cross examine by the petitioner. The petitioner agrees to deposit a sum of Rs.15,000/- as witness batta for P.W.8 and Rs.10,000/- as witness batta for P.W.9 within a period of three working days from the date of receipt of a copy of this order.

7.The petitioner is directed to examine P.W.8 and P.W.9, on the date fixed by the trial Court on payment of necessary charges. If the petitioner fails to cross examine P.W.8 and P.W.9 on the date fixed by the trial Court, the trial Court is directed to proceed with the trial in accordance with law. The process will be completed within a period of two weeks from the date of receipt of a copy of this order. The trial Court is directed to complete the proceedings within a period of four weeks thereafter.

8.In view of the above, this Criminal Original Petition is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



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To

1.The II Additional District Judge for CBI Cases,
Madurai.

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

Copy to

The Special Public Prosecutor (for CBI Cases)
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.S.POORNACHANDRAN, Advocate (SR-351[F] dated
06/01/2020)

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