

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.02.2021

CORAM

THE HONOURABLE Mr. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.557 of 2021
and
Crl.M.P.Nos.341 and 342 of 2021

A.K.Alva
S/o.Late Shri.P.M. Alva
Asst. General Manager (Retd)
Union Bank of India
F-2, 1st Floor, 139, Siri Park View
Vijaya Bank Layout
Bilakahalli, Bangalore-76 Petitioner/1st Accused

Vs.

STATE: Represented by
Inspector of police
CBI/BS & FC/BLR-RC 1(E)/07
Bangalore ...Respondent/1st Accused

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to set aside the order dated 18.12.2020 in Crl.M.P.No.8168 of 2019 in C.C.No.32 of 2008 in the Court of the XI Additional Sessions Judge for CBI Cases (Banks & Financial Institutions), Chennai - 600 001 in BS & FC-BLR RC 1(E)/07 on the file of the respondent, pending disposal of the original petition.

For Petitioner : Mr.R.John Sathyan
Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI Cases

For

सत्यमेव जयते
ORDER

(The case has been heard through video conference)

This petition has been filed seeking to set aside the order dated 18.12.2020 in Crl.M.P.No.8168 of 2019 in C.C.No.32 of 2008 passed by the XI Additional Sessions Judge for CBI Cases (Banks & Financial Institutions) dismissing the petition filed under Section 311 to recall the witnesses for cross examination.

2. The learned Counsel for the petitioner would submit that the petitioner had filed a petition in CrI.M.P.No.5108 of 2016 to add P.W.2 (Smt.C.S.Narayani) as an accused in C.C.No.32 of 2008 since, the charges against the P.W.2 and the petitioner were one and the same before the departmental proceedings, whereas, the petitioner was made as a scape goat and the P.W.2 was exonerated in the departmental proceedings. Based on the outcome of the departmental proceedings, P.W.2 was also not added as an accused in C.C.No.32 of 2008 pending before the trial Court. Since there were specific materials against P.W.2, the petitioner filed CrI.M.P.No.5108 of 2016 to add P.W.2 as an accused in the case. However, the petition filed by the petitioner under Section 319 Cr.P.C. was dismissed by an order dated 29.06.2018. Against the dismissal in CrI.M.P.No.5108 of 2016, the petitioner preferred a revision petition before this Court in CrI.R.C.No.1433 of 2018 and the same was dismissed by this Court by order dated 30.01.2019. The petitioner had thereafter, applied for certified copy of the order through his Counsel on 30.01.2019 and the copy was made ready only during the first week of July 2019. Thereafter, the petitioner approached the Hon'ble Supreme Court and preferred a Special Leave Petition in S.L.P. (CrI.) No.516 of 2020. However, the S.L.P. was dismissed by the Hon'ble Apex Court on 28.02.2020. Further, during the pendency of the petitions, the petitioner had as an abundant caution, preferred the petition to recall the witnesses. He would submit that it was not the intention of the petitioner to delay cross examination of witnesses. Since the impleadment of P.W.2 as accused has a direct bearing on the fabric of the case, the petitioner took time to cross examine P.W.2 and the other witnesses. The petitioner had been all along co-operating with the prosecution in the trial and only for the above reason, the petitioner was unable to cross examine the witnesses. He would further submit that the recall and cross examination of the witnesses is essential to arrive at a just decision of the case. He would further submit that the trial Court taking into consideration the Judgement of the Hon'ble Supreme Court in Vinod Kumar Vs. State of Punjab, reported in (2015) 3 SCC 220 had dismissed the petition. He would submit that fair trial is the main object of any criminal proceedings and it is the duty of the Court to ensure that such fairness is not hampered or threatened. Fair trial is constitutional as well as human right and under no circumstances, the persons right to fair trial can be jeopardised by a straight jacket formula and it is necessary that the facts and circumstances in the particular case has to be taken into account. He would submit that if the witnesses are not permitted to be recalled and if the petitioner is not permitted to cross examine them, grave and irreparable prejudice would be caused to the petitioner and it

will be against the principles of fair trial. Whereas, the learned trial Judge, without taking into consideration the facts of the case, relying on the Judgement of the Hon'ble Supreme Court reported in Vinod Kumar Vs. State of Punjab, has passed the order. He would further submit that the petitioner is prepared to abide by any condition and that the petitioner also undertakes to cross examine the witnesses on the same day of their appearance before the Court.

3. The learned Special Public Prosecutor for C.B.I. Cases would submit that the case is of the year 2008 and now the case stands posted for arguments and the trial Court finding that the petitions have been filed belatedly, had dismissed the petition taking into consideration the orders of the Hon'ble Apex Court in Vinod Kumar Vs. State of Punjab. He would further submit that P.W.6 in this case had already been recalled by the petitioner and cross examined by him and he would seek for dismissal of the petition.

4. At this juncture, the learned Counsel for the petitioner would submit that he had cross examined majority of the witnesses in time. Though, it is a case of the year 2008, the petitioner is not solely responsible for the delay. The petitioner was waiting to cross examine awaiting the result of the petition filed under Section 319 Cr.P.C. and at no point of time, the petitioner had stifled the trial.

5. This Court on the earlier occasion perused the materials on record and also the depositions of witnesses in chief. On perusal of records, it was found that P.W.6 was earlier recalled and cross examined by the petitioner. This Court considering the evidence in Chief of the witnesses sought to be recalled, thought it fit that all the other witnesses excepting P.W.6 can be recalled for cross examination since, their evidence appeared to be essential to arrive at a just decision in the case. This Court also felt that if chance is not given to the petitioner, it would cause grave prejudice to the petitioner. Thereby, this Court directed the learned Special Public Prosecutor for CBI Cases to find out about the availability of the witnesses and the dates on which they could be produced before the Court for examination.

6. When the matter is taken up for hearing today, the learned Special Public Prosecutor for CBI cases on instruction would submit that P.W.2 and P.W.18 are from Bangalore, P.W.19 is from Mumbai, P.W.20/ the Investigation Officer is presently working in C.I.S.F. Delhi and P.W.21 has retired as a

Superintendent of Police and is residing at Cochin. He would submit that P.W.2, P.W.18 and P.W.19 have agreed to appear before the trial Court in person and they will be able to present before the Court on 10.02.2021 subject to the petitioner undertaking to pay the cost of their travel and boarding at Chennai. He would further submit that P.W.20 and 21 have expressed their difficulties in appearing before the Court physically and they have agreed to appear through Video Conferencing. However, he would submit that P.W.21 who is presently settled at Cochin has requested that the copies of the C.D. File may be sent to him before examination and he would submit that he would fix a date for examination of P.W.20 and P.W.21 after consultation with his counter part before the trial Court.

7. This Court perused the order passed by the trial Court. This Court does not find any infirmity or illegality in the order passed by the trial Court. The trial Court following the mandate of Vinod Kumar Vs. State of Punjab, had dismissed the petition. However, taking into consideration the facts of the case, this Court is of the opinion that the petitioner should be afforded an opportunity to cross examine the witnesses subject to conditions and cost.

8. In view of the above, a direction is issued to the learned XI Additional Sessions Judge for CBI Cases (Banks & Financial Institutions), Chennai - 600 001 to recall P.W.2, P.W.18 and P.W.19 to appear before the Court on 10.02.2020. Further, the petitioner shall pay the cost of Rs.25,000/- (Rupees Twenty Five Thousand Only) each to P.W.2 and P.W.18 and Rs.30,000/- (Rupees Thirty Thousand Only) to P.W.19. The P.W.20 and P.W.21 shall be recalled for cross examination on a subsequent date subject to the convenience of the trial Court either by way of Physical hearing or through Video Conferencing. If P.W.20 and P.W.21. are willing to appear in person, the petitioner shall pay the cost of Rs.30,000/- (Rupees Thirty Thousand Only) each, to them.

9. It is made clear that the witnesses shall be cross examined on the same date of their appearance and if the witnesses are not examined on the date of their appearance, the petitioner will lose his further chance of cross examination.

10. The learned Special Public Prosecutor for C.B.I. Cases is directed to intimate the trial Court about this order and the trial Court without waiting for the copy of the order, shall issue summons to P.W.2, P.W.18 and P.W.19 for their appearance on 10.02.2021.

11. With the above observations, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The XI Additional Sessions Judge
for CBI Cases (Banks & Financial Institutions),
Chennai - 600 001
2. Inspector of police
CBI/BS & FC/BLR-RC 1(E)/07
Bangalore
3. The Special Public Prosecutor for CBI Cases
High Court, Madras.

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