

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.R.C.Nos.54 and 55 of 2021
and Cr.M.P.Nos.991 and 992 of 2021

S.Kannan
S/o. Sivanesh

... Petitioner/Accused No.6
in Crl.R.C.No.54 of 2021

Vedagiri Gowthaman
S/o. Vedagiri

... Petitioner/Accused No.4
in Crl.R.C.No.55 of 2021

Vs.

State represented by,
The Deputy Superintendent of Police,
CBI STF, New Delhi.

... Respondent/Complainant
in both Crl.R.Cs.

Criminal Revision Petitions filed under Section 397 read with 401 of Cr.P.C. against the order passed by the Special Court No.1 of Trial for Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, in Crl.M.P.No.13839 of 2020 in C.C.No.10 of 2019, dated 25.01.2021.

For Petitioners: Mr.AR.L.Sundermohan
for M/s.P.Muthukumar
(in Crl.R.C.No. 54/2021)

For Respondent : Mr.AR.L.Sundaresh,
Senior Counsel for
Mr.P. Muthukumar
(in Crl.R.C. No. 55/2021)
Mr.K.Srinivasan
Special Public Prosecutor
for CBI Cases in both Crl.R.Cs

COMMON ORDER

These Criminal Revision Cases have been filed challenging the order of the Trial Court, permitting the prosecution to conduct further investigation under Section 173(8) of Cr.P.C.

2. The final report was filed as against the accused persons for various offences punishable under Sections 120B r/w 409, 467, 471, 477-A IPC and Section 18 (2) r/w 13(1)(c) & (d) of PC Act, 1988. The allegations in the final report pertain to loss to the exchequer by misusing the telephone connections. Be that as it may. The prosecution case may not be necessary in this revision, as the issue involved in this revision is very narrow. Though 79 witnesses have been cited on the side of the prosecution, 36 witnesses have been examined, which is also not disputed by both sides. At this stage, it appears that the defence side has also filed a memo seeking direction to the respondent/prosecution to produce all relevant documents, which were already unearthed during the investigation by the respondent. However, those documents have not formed part of the final report.

3. Accused No.4 filed a memo detailing the various documents seized by the prosecution. The trial Court, vide order dated 10.03.2020, in C.C.No.10 of 2019 passed the following order:

"A3 and A7 appearance already dispensed with. Others absent. Petition filed under Section 317 of Cr.P.C. is allowed. Memo filed by A4. Considered. Heard the Special Public Prosecutor and the counsel for accused. The documents listed and pointed out by defence in the memo were relied upon by the prosecution witnesses. Even as per the case of the prosecution the files listed in the memo which are part of seized documents (Seizure memo in L.D.2 and L.D.69) are relevant documents. The meter reading of the phones would indicate the usage. All documents seized by the prosecution are relevant to the case of prosecution for proving the loss and also for proving the facts that BSNL had issued materials from the stores. All the documents seized and relied upon by the prosecution are not submitted before this Court. The documents relied upon by the prosecution cannot be kept away either from the court or from the defence. Thus the prosecution is directed to submit all the documents mentioned in the memo filed by A4 today (which form part of seizure memos). Upon such production copies of all the documents shall be produced to the accused persons. No witnesses present. At request of Special Public Prosecutor for production of documents and witness by 18.03.2020."

4. However, CDs were not produced for compliance of the order and again, a memo was filed by the accused No.4 dated 27.11.2020, for which, the prosecution has filed a memo seeking further time on the ground that those CDs pertaining to the CDR's of the mobile connections have to be verified and obtained from CBI, STB, New Delhi. Thereafter, an application under Section 173 (8) of the Code of Criminal Procedure was filed for further investigation. On entire application scanned, the grievance of the prosecution appears to be that though the documents were produced before the Court at the instance of the accused, those documents ought to be proved before the Court of law by relevant witnesses and one of the apprehensions expressed by the prosecution is that the data and master data ought to be co-related with Experts and Experts to be examined.

5. During the submissions, when the Court posed a question as to why the prosecution has not resorted to the provisions under Section 311 of Cr.P.C., the prosecution has submitted that in respect of the documents produced before the Court, they will resort to the provisions under Section 311 of Cr.P.C. and summon additional witnesses and examine them. It is also submitted that they will also prove the data with the aid of the technical persons or Experts, as the case may be. It is categorically admitted by the respondent that no further documents are required to be unearthed in this case, since the documents are already on record. But, the only apprehension of the Special Public Prosecutor is that the Liaison Officer of Parliament has to be examined to prove the entitlement of the Parliamentarian as to the use of telephone. Such apprehension, in view of this Court, is unwarranted.

6. The prosecution also can summon such persons to produce all relevant documents in that regard to prove the particular fact by resorting to the provisions under Section 311 of the Code of Criminal Procedure to examine the witnesses to prove the documents, which are already brought on record, at the instance of the memo filed by A4. Another aspect submitted by the Special Public Prosecutor is that in the event of any new material brought on record, the prosecution will also include others as an accused. Such submissions cannot be given much importance in this revision. It is for the trial Court to take any such decision on the evidence available on record, if any application filed under Section 319 of the Code of Criminal Procedure. Therefore, this Court cannot make roving enquiry as to whether further accused is to be added or not in this revision. As the entire scope of the application is limited as understood and agreed by the parties relate only to prove the documents which are already on record, the prosecution shall

resort to the provisions under Section 311 Cr.P.C. and summon the witnesses and prove the documents as per law. In view of admitted case of both sides, the further investigation ordered by the trial Court is not required. Accordingly, the order passed by the Court in C.M.P.No.13839 of 2020 is set aside.

7. This Court, vide order dated 20.03.2019, while dismissing the revision petition earlier filed in Crl.O.P.Nos.3761 to 3764 of 2019 and 3901 of 2019, directed the trial Court as follows:

"54. In the result, all the Criminal Original Petitions are dismissed. The Court below is directed to proceed further with the trial and complete the proceedings within a period of four months from the date of receipt of copy of this order. The trial shall be conducted strictly in line with Section 309 of the Code of Criminal Procedure and the guidelines given by the Hon'ble Supreme Court in Vinod Kumar vs. State of Punjab reported in [2015 (1) MLJ (crl) 288]. If the petitioners adopt any dilatory tactics, it is open to the trial Court to insist upon their presence and remand them to custody as laid down by the Hon'ble Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh reported in [JT 2001 (4) SC 319]. Consequently, connected miscellaneous petitions are closed."

8. Therefore, the trial Court shall strictly follow the provisions under Section 309 of the Code of Criminal Procedure and complete the trial on day-to-day basis expeditiously without any further delay.

9. Taking note of the earlier proceedings, which also went up to the Apex Court and also the fact that the trial has commenced, which is half way through, the prosecution shall endeavour to produce all the witnesses expeditiously without any further delay. The prosecution shall also give the list of witnesses and additional witnesses in advance to the trial Court as well as to the defence side.

10. Accordingly, both the Criminal Revision Cases are allowed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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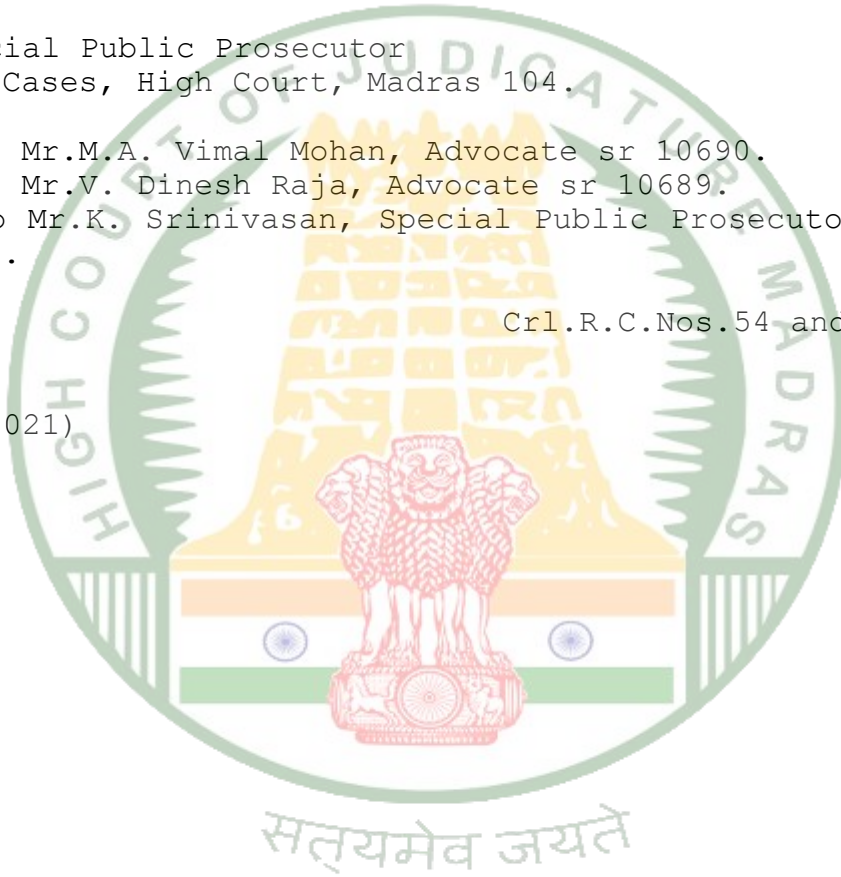
To

- 1.The Sessions Judge
Special Court No.1
for Trial of Criminal Cases related to
Elected Members of Parliament and
Members of Legislative Assembly of Tamil Nadu
Chennai.
- 2.The Deputy Superintendent of Police
CBI, STB, New Delhi
- 3.The Special Public Prosecutor
for CBI Cases, High Court, Madras 104.

+1 CC to Mr.M.A. Vimal Mohan, Advocate sr 10690.
+1 CC to Mr.V. Dinesh Raja, Advocate sr 10689.
+1 CC to Mr.K. Srinivasan, Special Public Prosecutor CBI Cases
sr 10537.

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EV(CO)
SP(26/02/2021)



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