



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.04.2021

PRONOUNCED ON : 03 .09.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.R.C. (MD) No.272 of 2021

and

CrI.M.P. (MD) No.2734 of 2021

P.Raghu Ganesh

: Petitioner

Vs.

The Additional Superintendent of Police,
CBI, SC-II, New Delhi.

: Respondent

PRAYER: Criminal Revision Petition filed under Section 397 Cr.P.C. r/w. Section 401 of Criminal Procedure Code, to call for the records pertaining to the order, dated 10.03.2021 passed by the learned I Additional District and Sessions Judge, Madurai, in Cr.M.P.No.161 of 2021 in S.C.No.470 of 2020 filed under Section 207 of Cr.P.C.

For Petitioner : Mr.S.Ananthanarayanan
Senior Advocate
for Mr.K.Elangovan

For Respondent : Mrs.L.Victoria Gowri
Assistant Solicitor General of India

ORDER

This is a petition filed by the A3 as against the order of the learned Trial Judge dismissing the petition filed by him under Section 207 of Cr.P.C., seeking to furnish copies of the statement given by the witnesses to the Investigation Officer under CBCID.

2.After examination of 45 witnesses, the State Government had transferred the Investigation to the Central Bureau of Investigation, as the accused in this case are police officials, therefore, the State Police or its agencies cannot render justice. Therefore, on demand of the general public, the case was transferred by the State Government to the Central Bureau of Investigation.

3.After CBI entered into the scene, they had investigated and laid final report before the learned Chief Judicial Magistrate, Madurai, who is competent to try the case, therefrom the case was received and transferred on point of jurisdiction. After laying



of the charge sheet and final report by CBI, the case was committed to the Court of First Additional District and Sessions Judge, Madurai.

4.The petitioner herein, who is A3, had sought documents from the learned First Additional District and Sessions Judge, Madurai, regarding the statement recorded from the 45 witnesses by CBCID and also the Compact Disc regarding the postmortem conducted on the body of the deceased.

5.The petition filed by the petitioner/A3, seeking to furnish copies of statement under Section 207 Cr.P.C., was dismissed by the learned First Additional District and Sessions Judge, Madurai, on the ground that the accused was already granted the copies under Section 207 Cr.P.C., by the learned Judicial Magistrate, and thereafter, the case was committed to the Court of the First Additional District and Sessions Judge, Madurai. On receipt of the charge sheet, the same was perused and numbered as Sessions Case by the Principal Sessions Judge and transferred to the Court of the First Additional District and Sessions Judge, Madurai. Therefore, the learned First Additional District and Sessions Judge, Madurai, felt that Section 207 Cr.P.C. cannot be invoked, as already the accused had received the copies. If they are in need of clean copy, they can apply and get it. Since miscellaneous petition was dismissed, A3 had filed this revision petition seeking to furnish copies from the Court of the learned First Additional District and Sessions Judge, Madurai.

6.On perusal of the affidavit and the counter affidavit filed by the learned Additional Public Prosecutor on behalf of the State, it is found that the learned Judicial Magistrate, Madurai, had applied his mind and committed the case to the Court of the learned District Judge. The learned District Judge, while rejecting the petition seeking copies, had mentioned that A3 can obtain copies after filing appropriate application before the Court concerned.

7.The intention of the learned Counsel for the petitioner is to obtain stay from this Court on some grounds. Therefore, the learned Principal District and Sessions Judge, had rejected the contention of the petitioner/A3 seeking to furnish copies of the statements recorded from 45 witnesses by CBCID.

8.The case was originally registered by Sathankulam Police and subsequently, on the directions of the State Government, it was transferred to CBCID and thereafter, CBCID had conducted investigation. When investigation was pending before CBCID, the affected parties and the general public had demanded the State Government to transfer the case to Central Bureau of



Investigation. Accordingly, the then Chief Minister of Tamil Nadu had ordered transfer of the case to CBI and CBI had taken up the investigation and filed final report of the investigation before the Court of the learned Chief Judicial Magistrate, Madurai, which is the Court for CBI cases.

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9.Mr.Raghu Ganesh, the petitioner herein, is the Sub Inspector of Police who had served in the Sathankulam Police Station during the period of occurrence and he is now arrayed as A3, as per the final report filed by CBI.

10.The petitioner herein as A3 had filed a petition under Section 207 Cr.P.C. seeking copies of the 45 witnesses who had already been examined by CBCID, before the investigation was transferred to CBI. This petition had been filed before the Court of the learned First Additional District and Sessions Judge where the case had been made over by the learned Principal District and Sessions Judge, Madurai, after committal proceedings by the learned Chief Judicial Magistrate.

11.The committal proceedings is with regard to the furnishing copies and bind over the accused to the Court of Sessions. The Principal District and Sessions Judge to whom the case was committed by the learned Chief Judicial Magistrate had numbered the case as S.C.No.470 of 2020 and made over the case to the First Additional District and Session Judge, Madurai. The learned First Additional District and Sessions Judge, had on receipt of the records in S.C. No.470 of 2020 framed charges and proceeded with the trial. At that stage, A3 before the learned First Additional District and Sessions Judge, Madurai, had filed petition under Section 207 Cr.P.C. seeking furnishing of copies of the records wherein the CBCID had proceeded with the investigation which petition was dismissed by the learned First Additional District and Sessions Judge, Madurai, on the ground that already under Section 207 Cr.P.C., copies were furnished by the learned Chief Judicial Magistrate, Madurai and the case was committed to the Court of Sessions (Principal District and Sessions Judge).

12.As per the Criminal Rules of Practice, when the investigation proceeds, the Investigation Officer files the record of investigation before the Court of the Judicial Magistrate and those documents or statements are not furnished to the accused or to the complainant. There is a bar to the Court that till investigation is completed and final report of the investigation is taken cognizance by the learned Judicial Magistrate, the learned Judicial Magistrate, shall not furnish copies. This was reiterated by the Hon'ble High Court in the case pertaining to disappearance of a Member of Legislative Assembly of Mylapore, Madurai, wherein the son of M.K.Balan had obtained a



statement from the Court of learned Judicial Magistrate before filing of the final report which was considered by the High Court as against the rules and the Court had ordered disciplinary proceedings against the staff concerned for furnishing copies.

13. The State Government had transferred the investigation from the CBCID to CBI and CBI had taken up the investigation. When CBI takes up investigation, the Investigation Officer of the CBI conducts independent investigation and does not depend on the investigation already conducted by the CBCID. Therefore, when CBCID had recorded statement of 45 witnesses, it is for the Investigation Officer of the CBI either to consider it or to reject it. If he had taken up the investigation and examined the very same witnesses, he is likely to record fresh statement from them in which case, the statement of the said witnesses will be available to the Court as the statement of the witnesses as recorded by the CBI. As per the provisions of Section 207 Cr.P.C., the accused shall be furnished with copies of all the statements and documents which are likely to be placed by the prosecution in that case of trial to prove the charges that were framed against the accused by the Court of Sessions.

14. When CBI had filed final report and the said statements and documents had been furnished by the committal Court/the Court of learned Chief Judicial Magistrate, the attempt of the petitioner herein who is also a Police Officer seeking statement of 45 witnesses who were already examined as witnesses by CBCID and which did not end up in laying a final report which had been taken over by CBI and not considered by CBI cannot be insisted by A3. Only those copies of statements of the witnesses whom CBI believes and based on which final report had been laid before the Court of learned Chief Judicial Magistrate, are furnished to the accused. The previous investigation had been closed mid-way. Therefore, the accused cannot have the right to claim such statements. Even if the accused receives copies by unfair means, the same cannot be relied before the Court of Sessions to protect the valuable right of defence. Therefore, the said attempt of A3 seeking statements of 45 witnesses already examined by CBCID is found to be mischievous and cannot be granted. Hence, rejected. The claim of Compact Disc regarding the videograph taken during the postmortem on the dead bodies of the deceased Jeyaraj and Bennics is granted, the learned First Additional District and Sessions Judge, Madurai, is directed to furnish Compact Disc of the postmortem performed over the bodies of the deceased Jeyaraj and Bennics, to A3. It is made clear that the statement of 45 witnesses whom CBCID had alleged to have examined need not be and cannot be furnished to the accused under Section 207 Cr.P.C., as those statements are not relied by CBI to prove the charges against the accused.



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In the result, this petition is dismissed as having no merits.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar (CS)

cmr/srm

To

- 1.The I Additional District and Sessions Judge,
Madurai.
- 2.The Additional Superintendent of Police,
CBI, SC-II, New Delhi.
- 3.The Assistant Solicitor General of India,
Madurai Bench of Madras High Court,
Madurai.

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03.09.2021

SR(CO)

SB(30.09.2021) 5P 4C