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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 12.4.2022.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Original Petition No.4297 of 2022
and
Crl.M.P.No.2160 of 2022

State rep. by
The Additional Superintendent of Police,
CBI STF, New Delhi. ... Petitioner

vs.

1. Sh.K.B.Brahmadattan
the then Chief General Manager,
BSNL, Chennai.
2. Sh.M.P.Velusamy
the then Chief General Manager,
BSNL, Chennai.
3. Sh.Dayanidhi Maran
the then Union Minister of
Communication & IT,
Government of India.
4. Sh.Vedagiri Gowthaman
5. Sh.K.S.Ravi
6. Sh.S.Kannan
7. Sh.Kalanidhi Maran
Chairman & Managing Director,
SUN Direct TV Pvt. Ltd., Chennai. ... Respondents

Criminal Original Petition filed under Section 407 read with Section 482 Cr.P.C. seeking to transfer the trial of the case in C.C.No.10 of 2019 pending on the file of Special Court No.1 of Trial for Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai to any other competent court.



For Petitioner : Mr.K.Srinivasan,
Special Public Prosecutor

For R3 & R4 : Mr.N.R.Elango, Senior Counsel
For R5 to R7 : Mr.AR.L.Sundaresan, Senior Counsel

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ORDER

The petition has been filed seeking to transfer the trial of the case in C.C.No.10 of 2019 pending on the file of Special Court No.1 of Trial for Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai to any other competent court.

2. The respondents are facing charges for the offences punishable under Section 120B read with Section 409, Sections 467, 471, 477-A IPC and Section 13(2) read with Section 13(1)(c) (d) of Prevention of Corruption Act, 1988 on the allegation that they had indulged into a telecom scandal in provision of service connections to the third respondent and the TV network run by the seventh respondent and the Trial is on progress at 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 C.C.No.10 of 2019. Whiles, alleging bias on the Presiding Officer, the petitioner/Prosecuting Agency has come up with the present petition seeking transfer of the proceedings to some other court.

3. The prosecution had stated that they have experienced several difficulties in conducting the prosecution before the Trial Court and that they have reasonable apprehension that the Presiding Officer is biased in favour of the accused and thereby they may not get fair and just trial.

4. The prosecution has raised the following grounds for seeking transfer:-

i) On 19.8.2021, when the witness LW-56 Meenalochiny was examined in chief, she voluntarily produced the print outs of emails which she earlier handed over to the IO, alongwith 65B Certificate. When the PP wanted to mark the said documents, the defence objected to the same without valid reason and the Hon'ble Judge also directed the PP to file a petition. Accordingly, the PP filed petition (Cr1.M.P.No.14196/2021) praying to allow prosecution to mark the email as well as the 65B Certificate as prosecution exhibits. The Hon'ble Judge, vide order dated 23.8.2021 allowed the said petition to mark the email alongwith the 65B Certificate. Thereafter, when the PP



proceeded to mark the said email and 65B Certificate as ordered by the Hon'ble Judge, the Judge marked only the 65B Certificate as EX.P.247 and did not mark the crucial document – the said email, in contrary to his own orders and inspite of repeated requests by the PP. This was in contradiction to his own Order dated 23.8.21, in which the Hon'ble Judge allowed to mark the said email and the 65B Certificate.

ii) Further, during the cross examination of the said witness, when the defence counsel for A-3 Dayanidhi Maran, proceeded to mark the email produced by the witness, as Defence Exhibit (Ex.D.9), the Hon'ble Judge allowed the same. This clearly revealed the complete biased attitude of the Hon'ble Judge, as he acted against his own order, by denying to mark the said document as prosecution exhibit but allowed to mark it as a defence exhibit.

iii) Further, during the cross examination of the said witness, the defence counsels insisted the witness to answer only as "Yes or No" and did not allow her to add explanation to the said answers. The Hon'ble Judge also insisted the said Witness to answer only as "Yes or No", and was reluctant to record the explanations given by the witness for such answers. Only on insistence by the PP, the answers of the witness were recorded in full.

iv) After examination of this witness, the Hon'ble Judge called the witness inside his Chambers and advised her that she should have answered only as Yes or No and should not have answered in detail. The Hon'ble Judge told the witness that had she given answers as Yes or No, her cross examination would have been completed much earlier and the names of other officials would not have been dragged through her answers. This act of the Hon'ble Judge in calling the Witness inside the Chambers and advising her to answer in a particular manner as desired by the defence counsels, clearly exhibited that he is favouring the defence.

v) Further, on 21.9.21, during the deposition of LW-42 Rangil Singh Rana, even before commencement of the cross examination, the Hon'ble Judge gave leading suggestions to the defence counsels to proceed with cross examination in question answer format. The Public Prosecutor objected to the same that the method of cross examination has to be decided by the defence counsels and the Hon'ble Judge cannot intervene in that aspect. Further, during the cross examination of the said witness, the Hon'ble Judge allowed the counsel for A-3, to repeat the same question twice, though the witness answered on the first occasion itself. The Public prosecutor objected to the same. Similarly, to a question "Was the entire file LD-104 now before



you shown to you by the CBI when you were examined by CBI?" the witness answered as "Since case pertaining to payment of 19 mobile bills was dealt during my period hence I saw the particular portions". Though the witness had given clear answer, the defence counsel stated that the witness has not answered to the question and repeated the same question, but the Public prosecutor vehemently objected that the witness already answered to the question. Further, already documents were shown to the witness in the open Court in presence of the Hon'ble Judge only and therefore this question does not arise. But, the Hon'ble Judge also asked the witness to answer properly to the question. On the insistence of the Public prosecutor, the entire proceedings were recorded by the Hon'ble Judge. But, the same question was again asked to the said witness inspite of objection by the Public Prosecutor. Further, the counsel for the Accused A3 Dayanidhi Maran, insisted to mark the entire file LD-104 as defence Exhibit. The Public prosecutor objected to this, on the ground that the witness has not spoken about the contents of the entire file but he has stated specifically about the billing portions alone. In spite of the said genuine objection, the entire file LD-104 was allowed by the Hon'ble Judge, to be marked as Ex.D11 . Also, the Hon'ble Judge continuously allowed the defence counsel to put questions about the documents, of which this witness is not at all the author. As the public prosecutor repeatedly raised objections to the acts of the defence counsel and the act of the Hon'ble Judge as mentioned above, the Hon'ble Judge remarked that if the public prosecutor is raising allegations against the Judge, the case may be got transferred to any other Court.

vi) Further, on 16.11.2021, when the evidence of LW-51/ PW-47 Sunil Kumar of MTNL, Delhi was being recorded, during the chief examination, as recorded in the 161 Statement of the witness, the Public Prosecutor proceeded to show one file bearing No.3 (LD-5/P.Ex.8) to the witness and asked to explain. For this, the counsel for A-3 objected on the ground that the said file pertains to BSNL and the witness is neither the author of the document nor handled the said file, as he is the employee of MTNL, New Delhi. The Public Prosecutor submitted to the Hon'ble Court that a similar issue was raised in respect of previous witness (LW-42/PW-43 R.S.Rana), in which, during the cross examination, the counsel for A-3 had shown him the files/documents for which the said witness was not the author and asked questions on the said documents. In spite of objections raised by the Public Prosecutor, the questions of the defence were then allowed by the Hon'ble' Court at that time and now for this witness, only for obtaining a technical opinion from the Witness by showing the Prosecution Exhibit, the defence objected. The Hon'ble Judge fully supported the version of the defence and denied permission to the Public Prosecutor to show

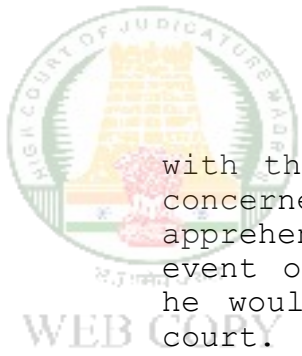


the Prosecution Exhibit to the witness and ask clarification. Further, after much persuasion, on the insistence of the Public Prosecutor, the denial made the Hon'ble Court has been recorded. Thus, the Hon'ble Judge, time and again, took contradictory and biased stands in support of the accused, while recording the evidence of prosecution witnesses, marking the documents etc.

vii) Thus, in respect of each crucial witness, throughout the Trial, during examination in chief, the defence counsels continuously object to marking of crucial documents as Prosecution Exhibits on one or the other reason. Similarly, during cross examinations, the defence counsels are trying to cut short the answers of the witnesses, twist the answers to suit to their version, club two or more questions to confuse the witnesses, repeat the same questions even after the witnesses answer, put irrelevant questions on the documents for which the witnesses are not the authors, etc; For all these acts of the defence counsels, the Hon'ble Judge favoured the defence as mentioned in the specific instances as above. The Hon'ble Judge remains a mute spectator and never condemned or controlled the attitude of the defence counsels. For all such attitudes of the defence counsels and the biased acts of the Hon'ble Judge, on each day of Trial proceedings, the Public prosecutor has to struggle to safeguard the interest of the Justice.

viii) The above specific instances clearly reveal that the Hon'ble Judge is allowing defence counsels to take undue advantage in dealing with the witnesses and the Hon'ble Judge is showing complete leniency and tilting towards the accused in allowing the above said acts of the defence counsels. During the day to day trial proceedings, the Hon'ble Judge remains silent when the defence counsels exceed their limits and encourages the defence counsels for their acts.

5. Taking the court through the above grounds, Mr.K.Srinivasan, learned Special Public Prosecutor appearing for the petitioner would submit that the Presiding Officer concerned is conducting the trial in a partisan manner by restraining the prosecution from examining the witnesses in depth and preventing marking of documents on the ground of non-furnishing of certificate of 65B of the Indian Evidence Act, whereas permitting the defence to mark the document and also remaining as a silent spectator when the defence counsel exceed their limits and rather, encourages the defence counsels for their acts, flouting the legal provisions and statutory restrictions. He would further submit that the Trial Judge had gone to the extent of calling the witnesses inside his Chambers and advising them to give evidence in a particular manner and despite the pendency of the matter before this court, the learned Trial Judge had insisted and pressurized the prosecution to get along



with the trial, which would prove that the Presiding Officer concerned acts in a biased manner, leaving a reasonable apprehension that a fair trial could not be expected in the event of it being continued before the same court and thereby he would seek for transfer of the proceedings to some other court.

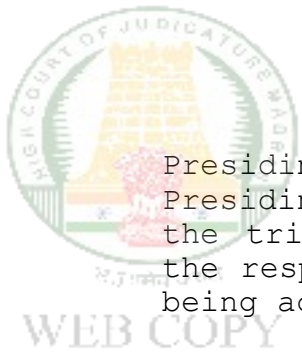
6. Per contra, Mr.N.R.Elango, learned Senior Counsel appearing for respondents 3 and 4 would submit that the defence had objected for marking of the email through the particular witness, PW39 as the said witness was neither the author nor the recipient of the email and the witness herself had forwarded the email to another email account of hers and the reason the defence wanting to mark it was just to show the time of forwarding of such email by her and therefore, the learned Trial Judge permitted for marking of such document. He would further submit that the procedure adopted by the Presiding Officer was not a new one and even on earlier occasion, the witnesses were examined in the form of questionnaire only as permitted under Section 275(3) Cr.P.C. He would further submit that since the prosecution is unable to explain the case, they are attempting to delay the prosecution, especially, when this court, in the earlier petitions, had directed the Trial Court to expedite the trial.

7. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for respondents 5, 6 and 7 would submit that whenever the atmosphere was not conducive for the prosecution, they have come out with objections. He would further submit that when PW39 was cross examined, the Public Prosecutor has walked out of the Trial Court without any valid reason. He would also submit that for the reasons best known to them, the prosecution wanted to delay the trial and thereby they have come out with this petition. He would further submit that other than that, the respondents have nothing to say in the present petition and they have also not filed counter affidavit.

8. In reply, the learned Special Public Prosecutor appearing for the petitioner would submit that the prosecution having attributed bias to the Presiding Officer, would find it inconvenient to conduct the Trial before the same Officer and in the present scenario, it may also not be conducive for the Trial Judge to proceed with the trial and thereby, he would pray that the case may be transferred to any other court.

9. Heard the learned counsel appearing for the parties and perused the materials available on record.

10. The present petition has been filed by the prosecution seeking transfer of the trial from the file of the present



Presiding Officer to some other court on the ground that the Presiding Officer is taking sides in the matter by conducting the trial in a biased manner in favour of the accused whereas the respondents claim that it is nothing but, a delaying tactics being adopted by the prosecution.

11. Insofar as recording of evidence in questionnaire form, this court is of the view that it is permissible as provided in Section 275(3) Cr.P.C., which reads as under:-

"275. Record in warrant-cases

(3) Cr.P.C. Such evidence shall ordinarily be taken down in the form of a narrative; but the Magistrate may, in his discretion take down, or cause to be taken down, any part of such evidence in the form of question and answer."

12. The petitioner intends to attribute bias to the Presiding Officer by contending that he is precipitating the prosecution to get along with the case, despite the pendency of the matter before this court. It is an admitted fact that while disposing the petitions filed by the respondents herein, this court had directed the Trial Judge to complete the trial in an expeditious manner, which would, certainly have some impact in conducting the Trial and thereby the attribution to the Trial Judge is unwarranted.

13. Insofar as other issues raked upon in the present petition is concerned, having heard the learned counsel appearing for the parties sufficiently, and considering the nature of criminal proceedings pending against the respondents and the plea of the prosecution in the present petition seeking transfer of trial to some other court on the ground of bias, this court finds that the issue now sought to be harped upon being a hypothetical one, the court need not get side-tracked into such issue, especially, when the respondents do not have any serious objection for transferring the case to some other court.

14. Accordingly, the trial of the case in C.C.No.10 of 2019 pending on the file of Special Court No.1 of Trial for Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai stands transferred to the file of Special Court No.2 of Trial for Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai. The entire materials of the case shall be forwarded by the Presiding



Officer of Special Court No.1 to the Special Court No.2 within a period of one week. The Special Court No.2, shall conclude the trial in compliance with the earlier directions of this court regarding the expeditious disposal of the case.

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15. The Criminal Original Petition is ordered accordingly. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Superintendent of Police,
CBI STF, New Delhi.
2. Presiding Officer,
Special Court No.1
of Trial for Criminal Cases
related to Elected Members of Parliament
and Members of Legislative Assembly
of Tamil Nadu, Chennai.
3. Presiding Officer,
Special Court No.2
of Trial for Criminal Cases
related to Elected Members of Parliament
and Members of Legislative Assembly
of Tamil Nadu, Chennai.
4. The Special Public Prosecutor for CBI cases,
High Court, Madras.

+1cc to Mr.K.Srinivasan, Advocate Sr.25318

+1cc to M/s.M.Sneha, Advocate Sr.26097

[10/06/2022]

Crl.O.P. No.4297 of 2022
and
Crl.M.P.No.2160 of 2022

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