



Crl.R.C.No.125 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.125 of 2024
and Crl.M.P.No.1032 of 2024

S.Durga Prasad

... Petitioner

Vs.

State represented by
The Inspector of Police,
CBI/ACB,
Chennai.

... Respondent

PRAYER : Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code, pleaded to set aside the order of the lower court in Crl.M.P.No.8236 of 2023 in C.C.No.21 of 2017 dated 29.11.2023 on the file of the learned XIII Additional Special Judge for CBI Cases, Chennai.

For Petitioner : Mr.Infant Dinesh

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI



Crl.R.C.No.125 of 2024

WEB COPY

ORDER

This Criminal Revision Case has been filed seeking to set aside the order passed by the learned XIII Additional Special Judge for CBI Cases, Chennai, in Crl.M.P.No.8236 of 2023 in C.C.No.21 of 2017 dated 29.11.2023, filed under Section 294 of Cr.P.C r/w Section 65 B of Indian Evidence Act and Rule 419 of 1951 of Indian Telegraph Act, not to permit the prosecution to produce the CD as secondary evidence in C.C.No.21 of 2017.

2. Learned counsel for the petitioner submitted that the petitioner, who is arrayed as A1, is facing trial in C.C.No.21 of 2017 pending on the file of the learned XIII Additional Special Judge for CBI Cases, Chennai. He further submitted that the prosecution had sought to mark the CD containing telephonic conversations between some of the accused and the approver as the secondary evidence in the case. He also submitted that as per the reply issued by the Central Information Commission, the original recordings of the alleged conversation have been destroyed by virtue of the order passed by the Review Committee on 28.03.2016, and in such circumstances, the respondent is



Crl.R.C.No.125 of 2024

attempting to mark the secondary evidence through the certification under Section 65B of the Indian Evidence Act. He further submitted that there are certain anomalies in the certification issued under Section 65B of the Indian Evidence Act. Thereby, the petitioner has filed the petition in Crl.M.P.No.8236 of 2023 objecting to mark the secondary evidence C.C.No.21 of 2017 before the trial Court, whereas, the trial Court had dismissed the application. Therefore, challenging the said impugned order, the present petition has been filed.

3. In reply, the learned Special Public Prosecutor for CBI submitted that CBI had obtained permission to intercept the telephonic conversations of the accused persons and only after obtaining orders from the Ministry concerned, CBI, Special Unit, started intercepting the mobiles and started recording of conversations between the accused and others. He further submitted that the prosecution is relying only on the conversations between the accused with other co-accused persons and those portions were copied into a Compact Disc and the same was provided to the accused also. Thereafter, after proper application before the Court to establish the voices contained in the said recordings, voice samples of the persons concerned were collected. The



Crl.R.C.No.125 of 2024

petitioner/accused and PW2 were sent to the Forensic Lab and Spectrograph analysis result has also been received.

4. He further submitted that though the original recordings are stated to have been destroyed, the respondent is entitled to mark the documents as secondary evidence, if it fall within the reasons stated under Section 65(c) of the Indian Evidence Act. He also submitted that if at all the petitioner has any objection to the same, he can raise his objection at the time of letting in evidence and that can be considered by the learned trial Judge while deciding the case. He further submitted that the right of the respondent in letting in any secondary evidence cannot be curtailed.

5. At this juncture, Mr.Infant Dinesh, learned counsel appearing for the petitioner seeks permission of this Court to withdraw the Criminal Revision Case and he would submit that the petitioner may be granted liberty to raise all the objections concerning the marking of the secondary evidence before the trial Court and the trial Court may also be directed to consider the same. He has also made an endorsement to that effect.



CrI.R.C.No.125 of 2024

WEB COPY

6. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor for CBI and perused the materials available on record.

7. In view of the above submissions and the endorsement made by the learned counsel for the petitioner, this Criminal Revision Case stands dismissed as withdrawn. Consequently, connected miscellaneous petition is also closed. However, the petitioner is at liberty to raise his objections with regard to marking of the secondary evidence and the certification issued under 65B in respect of the secondary evidence during trial and the relevance of the document and evidence shall be decided at the appropriate stage in accordance with law.

31.01.2024

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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Crl.R.C.No.125 of 2024

A.D.JAGADISH CHANDIRA, J.

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To

1. The Inspector of Police,
CBI/ACB,
Chennai.
2. The Public Prosecutor,
High Court of Madras.

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and Crl.M.P.No.1032 of 2024**

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