

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2025

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.393 of 2008

and

Crl.O.P.No.15720 of 2009

The State Rep.by the
Inspector of Police
CBI/ACB/Chennai.

... Petitioner in both petitions

Vs.

A.P.Mohammed Ali

... Respondent in both petitions

Common Prayer : Criminal Revision petition and Criminal Original Peititon filed under Sections 397 and 401 of Criminal Procedure Code, praying to set aside the order in Crl.M.P.No.2077 of 2007 in C.C.No.35 of 2005 dated 15.02.2008 on the file of the Additional Special Judge for CBI Cases, Chennai.

For Petitioner in

both petitions : Mr.K.Srinivasan
Special Public Prosecutor

For Respondent in

both petitions : Mr.R.Ravindran

COMMON ORDER

Both these petitions given quietus by orders dated 13.12.2018 and 01.11.2011 respectively, passed by this Court. However, the same are listed today pursuant to the letter dated 06.08.2025 addressed by the IX Additional Special Judge for CBI Cases, City Civil Court, Chennai to the Registry of this Court, seeking clarifications.

2. The petitioner, CBI/Prosecuting Agency filed both petitions. The respondent, who is Accused No.2 in C.C.No.35 of 2005 filed a petition under Section 91 Cr.P.C., before the trial Court summoning 72 documents. The trial Court by the order dated 15.02.2008 in Crl.M.P.No.2077 of 2007, allowed the petition, aggrieved against the same, the CBI initially filed Crl.R.C.No.393 of 2008 before this Court and at that time, this Court observed Criminal Revision Petition not maintainable against the order passed by the trial Court

under Section 91 of Cr.P.C., and the Special Public Prosecutor (CBI) submitted that the Revision Petition will be withdrawn and alternatively, the CBI Shall file a Criminal Original Petition to challenge the said order. Thereafter, the CBI filed Crl.O.P.No.15720 of 2009 challenging the above impugned order and this Court on 01.11.2009 passed the following order and the relevant para Nos.4 & 5 are extracted hereunder:

“4. The learned Special Government Pleader appearing for the petitioner submits that the available documents have already been produced before the trial Court and the remaining documents could not be traced and therefore, the trial need not be delayed.

5.Considering the facts and circumstances of the case, the trial Court is directed to proceed with the trial with the available materials after fifteen days from the date of receipt of a copy of this order.”

3. Thereafter, the trial Court proceeded with the trial following the order dated 11.11.2009 in Crl.O.P.No.15720 of 2009 but Crl.R.C.No.393 of 2008 not withdrawn later and it was listed in the usual course, again, an order came to be passed on 13.12.2018, setting aside the impugned order dated 15.02.2008. Now an anomaly arose, hence, the learned IX Additional Special Judge for CBI Cases, City Civil Court, Chennai, on 06.08.2025 by letter vide Dis.No.685/2025 dated 06.08.2025 sought clarification stating that the case in C.C.No.35 of 2005 is pending trial and so far PW1 to PW96 examined, the case is at final stage and at that time, the counsel for A2 filed Crl.M.P.No.1457 of 2025 to take serious view against CBI for suppression. The case was listed for hearing, the learned counsel for CBI and for the respondent/A2 appeared. The learned counsel for the respondent submitted that earlier in the revision case, respondent appeared and raised his objections. Since it is an interlocutory order, the revision will not lie, and the CBI submitted that they will withdraw the Crl.R.C and instead file a Criminal Original Petition.

4. In fact, they filed Crl.O.P.No.15720 of 2009 but failed to withdraw the Crl.R.C.No.393 of 2008. As far as the counsel for A2 is concerned, he was under the *bonafide* belief that Crl.R.C.No.393 of 2008 withdrawn by the CBI. But later A2 counsel found CBI not withdrawn Crl.R.C.No.393 of 2008 and also not informed about the order passed in Crl.O.P.No.15720 of 2009 and obtained a contradictory order in Crl.R.C.No.393 of 2008 which is not proper. Hence, there are two conflicting orders of High Court in respect of the same impugned order passed in Crl.M.P.No.2077 of 2007 by the trial Court.

5. In view of this contradictory position, now A2 counsel had filed Crl.M.P.No.1457 of 2025 before the trial Court, to take serious view of suppression by CBI.

6. The counsel for A2 submitted that since he was under the *bonafide* belief that Crl.R.C withdrawn he had not pursued and followed Crl.R.C. Now the order passed in Crl.R.C.No.393 of 2008 setting aside the impugned order

by giving liberty to file an appropriate petition as per Section 243(2) Cr.P.C to call for the records under Section 91 Cr.P.C. According to the learned counsel for A2, the subsequent order dated 13.12.2018 amounts to nullify the earlier order passed by this Court in Crl.O.P.No.15720 of 2009, since some documents made available already marked as Exhibits and confronted with the witnesses and this part of evidence would now become questionable. He fairly submitted that now the case has reached the final stage and the Investigating Officer is only to be examined. Hence, has no serious objection to set aside the second order passed in Crl.R.C.No.393 of 2008 dated 13.12.2018. His only submission is that had it been done by petitioner or any accused other than prosecuting agency, this Court would have taken a serious view and hence, the action of CBI has to be viewed seriously and for that reason only he had filed a petition before the Lower Court.

7. The learned Special Public Prosecutor appearing for CBI submitted that when the Crl.R.C.No.393 of 2008 was filed in the year 2008 by the

erstwhile Public Prosecutor and thereafter he was advised to withdraw the revision case and to file a Criminal Original Petition. Though Crl.O.P was filed by inadvertence Crl.R.C not withdrawn. In the routine manner, Crl.R.C was listed before this Court again after seven years and the present Special Public Prosecutor appeared in the Crl.R.C. on 13.12.2018, who was not aware of earlier developments and the order passed in Crl.O.P.No.15720 of 2009. He further submitted that A2 counsel name was printed in the cause-list but not appeared. Hence, there was no occasion for the Special Public Prosecutor and the Court to know about the order passed in Crl.O.P.No.15720 of 2009. He further submitted that now the case has reached the final stage, except for I.O. all other witnesses examined. The available documents were produced all have been marked as exhibits.

8. He fairly further submitted that the learned counsel for A2 had cross examined the witnesses then and there without delay, since a order has been passed in Crl.R.C on 13.12.2018, A2 counsel had taken some objection. He

further referring to both the orders submitted that in the earlier order it is recorded some documents available and the trial to proceed. In the second order, though set aside the impugned order dated 15.02.2008 but granted liberty to the petitioner to summon the documents at the stage of 243(2) Cr.P.C. But fairly submitted that second order came to be passed inadvertently. The mistake is a bonafide mistake and both the CBI as well as A2 could have informed this Court about the earlier order passed in Crl.O.P.No.15720 of 2009. He submitted that the second order has to be recalled and since it is a nullity in the eye of law.

9. Considering the submissions and on perusal of the materials, this Court finds mistake has been committed due to inadvertence by all concerned and order earlier passed by this Court in Crl.O.P.No.15720 of 2009, unknowingly the second order came to be passed in Crl.R.C.No.393 of 2008. Hence, the same is recalled and Crl.R.C.No.373 of 2008 dismissed as infructuous.

10. The learned counsel for A2 fairly submitted that he is not pressing the petition filed in Crl.M.P.No.1457 of 2025 and undertakes to withdraw the same. Hence, no quandary.

11. In view of the above, the query raised by the trial Court is answered accordingly. The trial Court shall proceed with the trial of the case accordingly.

08.09.2025

Index: Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

Neutral citation: Yes/No

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To

1.The Additional Special Judge for CBI Cases, Chennai.

2.The Inspector of Police
CBI/ACB/Chennai.

3.The Public Prosecutor,
High Court of Madras.

Crl.R.C.No.393 of 2008 & Crl.O.P.No.15720 of 2009

M.NIRMAL KUMAR, J.

dna

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and
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