Petitioner Vs. Respondent

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Court : Chennai

Decided On : Sep-12-2016

Judge : M. Venugopal

Appeal No. : O.A.No. 371 of 2016 in E.L.P.No. 1 of 2011

Appellant : Petitioner

Respondent : Respondent

Judgement :

M. Venugopal, J.

1. The Applicant/1st Respondent has preferred the instant Original Application praying for passing of an order to issue subpoena to Mr.N.K.Bansal, Deputy Commissioner of Income Tax, Circle-12 (1), Central Revenue Building, IP Estate, New Delhi-110 002 to produce the records and tender evidence relating to the current status of the investigation into seizure of Rs.1,18,00,000/- cash from the vehicle belonging to G4S cash Solutions (I) Pvt. Ltd. on 12.04.2011 during the Assembly Election of Kolathur Assembly Constituency of Tamil Nadu held in the year 2011.

2. According to the Learned Counsel for the Applicant/1st Respondent, the Respondent/Election Petitioner has alleged corrupt practice against the Applicant/1st Respondent (in Election Petition No.1 of 2011) for the Assembly

Election held in the year 2011. Further, it is represented on behalf of the Applicant that the 1st Respondent/Election Petitioner had marked Ex.P.31 - Reply from the Deputy Commissioner of Income Tax, New Delhi wherein the Respondent/Election Petitioner's request to produce the status report was not furnished due to the pending investigation. In fact, the said reply was issued in the year 2013.

3. The Learned Counsel for the Applicant/1st Respondent submits that the Respondent/Election Petitioner as P.W.1 had deposed in his evidence on 06.12.2013 that he has given a complaint on 20.06.2011 as Ex.P.15 to the Election Officials and the Income Tax Department as regards the alleged transportation of cash of Rs.1.18 crores on 12.04.2011 and also he made several contrary statements in this regard. Therefore, the plea of the Applicant/1st Respondent is that it is necessary to know the status of the said amount purportedly seized and pending with the Income Tax Department in order to bring the true facts before this Court to overcome the allegations leveled against him.

4. In this regard, the evidence of the Deputy Commissioner of Income Tax, New Delhi is significant and important one so as to enable the Applicant/1st Respondent to establish that the allegations made by the Respondent/Election Petitioner are false, baseless and concocted one and therefore, the Original Application may be allowed by this Court in the interest of Justice.

5. In response, the Learned Counsel for the Respondent/ Election Petitioner submits that the O.A.No.371 of 2016 in ELP.No.1 of 2011 filed by the Applicant/1st Respondent is not maintainable at this stage, since the List of Witnesses does not contain the name of the person to whom the subpoena is to be issued. Also that, the Original Application No.371 of 2016 is filed only to drag on the main proceedings of ELP.No.1 of 2011 on the file of this Court.

6. According to the Learned Counsel for the 1st Respondent/ Election Petitioner that the Applicant/1st Respondent had not assigned proper reasons for not including the witness in the List of Witnesses filed by him and also not specifically averred anything about the facts for issuing subpoena to the Deputy Commissioner of Income Tax. Therefore, the O.A.No.371 of 2016 filed by the Applicant/1st Respondent is devoid of merits.

7. It is to be noted that the only jurisdiction which the Court has to decline to examine a witness, is the one set out in Section 87(1), proviso of the Act, 1951. Indeed, by means of that proviso, the discretion of a Court of Law is confined to refusal to examine witness based on the reason that the evidence is a vexatious or frivolous one or likely to lead to the delay in regard to the conduct of the proceedings.

8. As a matter of fact, in an Election Petition, the filing of List of Witnesses, with a brief of the relevance of their evidence is intended not only to put the other side on notice about the evidence sought to be summoned but also to bind the concerned party to the production of the relevant evidence as detailed in the list. Undoubtedly, the List of Witnesses has a great sanctity and vital importance. Also that, the List of Witnesses is required to be carefully scrutinized before issuance of summons, as per decision of the Hon ble Supreme Court in Quamarul Islam V. S.K.Kanta, AIR 1994 SC 1733.

9. Besides the above, the Court cannot compel a party to summon a witness or cannot penalize him for refusal to summon, as per decision 2 IC 347. At this stage, one cannot brush aside a primordial fact that Order XVI Rule 1 of the Civil Procedure Code provides for List of Witnesses being filed and summons being issued to them for being present in Court for recording their evidence. However, Order XVI Rule 1-A, on the other hand, refers to production of witnesses without summons where any party to the suit may bring any witness to give evience.

10. In reality, Order XVI Rule 1(2) CPC enjoins a party desirous of obtaining any summons for the attendance of any person shall file in Court an Application mentioning therein the purpose for which the witness is proposed to be summoned . The aim of disclosing such a purpose is to enable a Court of Law to determine whether the examination of such witnesses is of material benefit to ultimately decide the dispute.

11. It is to be remembered that a Court of Law has to pass an order on the Application and therefore, a duty is cast on the Court to take into account of the fact whether such an examination of witness is just and necessary to secure the ends of Justice. Further, ordinarily rule is that a party cannot be compelled to

disclose the names of his witnesses if such a disclosure reveals or is a clue to the evidence proposed to be led by him, as per decision Temperton V. Russell, 9 TLR 321. In short, the approach of the Court should be to neither defeat the ends of Justice nor cause any undue delay in litigation. Moreover, a Court of Law should not leave the number to the whims and fancies of a party producing the witness(s).

12. It may not be out of place for this Court to make a significant mention that it is open to a party to produce a witness even if the witness is not listed in the 'List of Witnesses'. Furthermore, Order XVI Rule 1-A of the Civil Procedure Code is not in derrogation of Rule 1(3) C.P.C. That apart, a litigant/party may bring witnesses even without applying for 'Court Summons'. However, 'Leave of the Court' is to be obtained before producing to examine such witnesses as per decision of the Hon'ble Supreme Court in Vidhyadhar V. Manikrao and another, (1999) 3 SCC 573 at special page 589.

13. Be that as it may, on a careful consideration of the respective contentions and also this Court taking note of the fact that the Applicant/1st Respondent has filed O.A.No.371 of 2016 before this Court seeking issuance of subpoena to Mr.N.K.Bansal, Deputy Commissioner of Income Tax, Circle-12 (1), Central Revenue Building,

IP Estate, New Delhi-110 002 to produce the records and to tender evidence relating to the current status of the investigation into seizure of Rs.1,18,00,000/- cash from the vehicle belonging to G4S cash Solutions (I) Pvt. Ltd. on 12.04.2011 during the Assembly Election of Kolathur Assembly Constituency of Tamil Nadu held in the year 2011, with a view to find out the status of the aforesaid sum allegedly seized and pending with the IT Department in order to bring the relevant facts before this Court and further, the present Application being the bona fide one, this Court, keeping in mind of the fact that a Court of Law is to deliver substantial cause of Justice to the parties overriding technicalities to secure the ends of Justice allows the Origional Application.

14. Resultantly, the Original Application is allowed. No costs. Registry is directed to issue subpoena to Mr.N.K.Bansal, Deputy Commissioner of Income Tax, Circle-12 (1), Central Revenue Building, IP Estate, New Delhi-110 002 to appear before

this Court on 27.09.2016 at 2.15 p.m. to produce the records and to tender evidence relating to the current status of the investigation into seizure of Rs.1,18,00,000/- cash from the vehicle belonging to G4S cash Solutions (I) Pvt. Ltd. on 12.04.2011 during the Assembly Election of Kolathur Assembly Constituency of Tamil Nadu held in the year 2011. The Applicant is directed to pay emergent batta in this regard. Private Notice is also permitted.