

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.08.2015

Delivered on : 17.08.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Cr1.OP No.30849 of 2014

&

M.P.No.1 of 2014

K.Subramanyam Raju

...Petitioner

Vs

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

...Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Spl.C.C.No.3 of 2010 on the file of Principal Sessions Judge, Puducherry and quash the same.

For Petitioner : Mr.M.L.Joseph for
M/s.Chennai Law Associates

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

ORDER

This Criminal Original Petition has been filed under section 482 of the Code of Criminal Procedure, 1973 praying to call for the records relating to Special Calendar Case No.3 of 2010 pending on the file of the Principal Special Judge, Puducherry and quash the same.

2. It is averred in the petition that the petitioner is a Civil Contractor functioning in Hyderabad and he has been arrayed as 3rd accused in Special Calendar Case No.3 of 2010. The Public Works Department, Government of Puducherry has proposed an action plan for the years 2003-2004 to provide additional water treatment

plant with 4 MLD capacity for Yanam Town. The petitioner has taken part in the tender. The petitioner has become a successful bidder in respect of 3 MLD WTP. It has been alleged that the petitioner has obtained such a tender in pursuance of criminal conspiracy with the other accused. Since the petitioner has not indulged in any malpractice and only on the basis of merit, his tender has been accepted, he cannot be roped in Special Calendar Case No.3 of 2010. Under the said circumstances, present petition has been filed for getting the relief sought for therein.

3. In the counter filed on the side of the respondent, all the averments made in the petition are denied. The specific contention put forth on the side of the respondent is that the firm of the petitioner has not possessed of requisite technical qualification in electro-chlorination units and therefore with the active connivance of other accused, the petitioner has managed to get tender and it is false to aver in the petition that the petitioner has no connection whatsoever with the alleged offences and therefore the present petition deserves to be dismissed.

4. The learned counsel appearing for the petitioner has argued that absolutely there is no evidence so as to connect the petitioner in crime and further no loss has occurred and the respondent without considering lack of materials to proceed against the petitioner has erroneously filed a final report and the same has been taken on file in Special Calendar Case No.3 of 2010 by the court below and therefore the proceedings of Special Calendar Case No.3 of 2010 as against the petitioner is liable to be quashed.

5. The learned Special Public Prosecutor appearing for the respondent has also equally argued that the petitioner and others are said to have committed offences punishable under sections 120-B r/w 420 of Indian Penal Code r/w 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and further without having necessary qualification with the connivance of other accused, the petitioner has been permitted to take part in the tender and ultimately the same has been concluded in his favour and therefore the petitioner has been arrayed as 3rd accused and under the said circumstances, the petitioner cannot be discharged from the proceedings of Special C.C.No.3 of 2010.

6. It is an admitted fact that the petitioner is a Civil Contractor. It is also equally an admitted fact that he has taken part in the tender called for in question and with regard to erection of particular unit, the tender offered by the petitioner has been accepted and to that effect, agreement has also come into existence.

7. The main contention put forth on the side of the petitioner is that no evidence is available against the petitioner in respect of the offences alleged to have been committed by the accused and due to the petitioner, no loss has occurred.

8. The main contention put forth on the side of the respondent is that the firm of the petitioner is not having requisite qualification so as to erect electro-chlorination unit.

9. For considering the rival contentions made on either side, the Court has to look into the conditions of tender, wherein it has been specifically stated as follows:

"The tenderer should have experience in providing electro-chlorination unit.
The financial turn over of the tenderer for the last three years should be not less than Rs.1 Crore per year."

10. Therefore, it is quite clear that every tenderer should possess necessary qualification as mentioned in the tender conditions.

11. Now the Court has to look into the statement alleged to have been given by one R.Suresh, wherein it is stated that "on seeing the file bearing No.5623 pertaining to construction of 3 MLD plant, the three tenderers, namely, M/s.Nagarjuna Constructions, M/s.Ramky Infrastructure and M/s.K.subramanyam Raju have not possessed of requisite qualification as per tender conditions." Therefore, it is quite clear that without having necessary qualification as prescribed in the tender conditions, the petitioner has participated in the tender and successfully achieved his object.

12. Since the petitioner has not possessed of requisite qualification, definitely the petitioner and other accused might have hatched machination, which culminated to accept the tender of the petitioner. Therefore, the Court cannot come to the conclusion to the effect that the petitioner has no connection in the alleged offences. Since the petitioner cannot say that he has no connection whatsoever with the alleged offence, the relief sought for cannot be granted and further even if the petitioner has not caused any loss, considering the nature of the offence alleged to have been committed by the petitioner and others, he cannot be absolved from liability. Therefore, viewing from any angle, the contentions put forth on the side of the petitioner are totally devoid of merits and consequently, the present Criminal Original Petition deserves to be dismissed.

In fine, Criminal Original Petition is dismissed.
Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

ajr

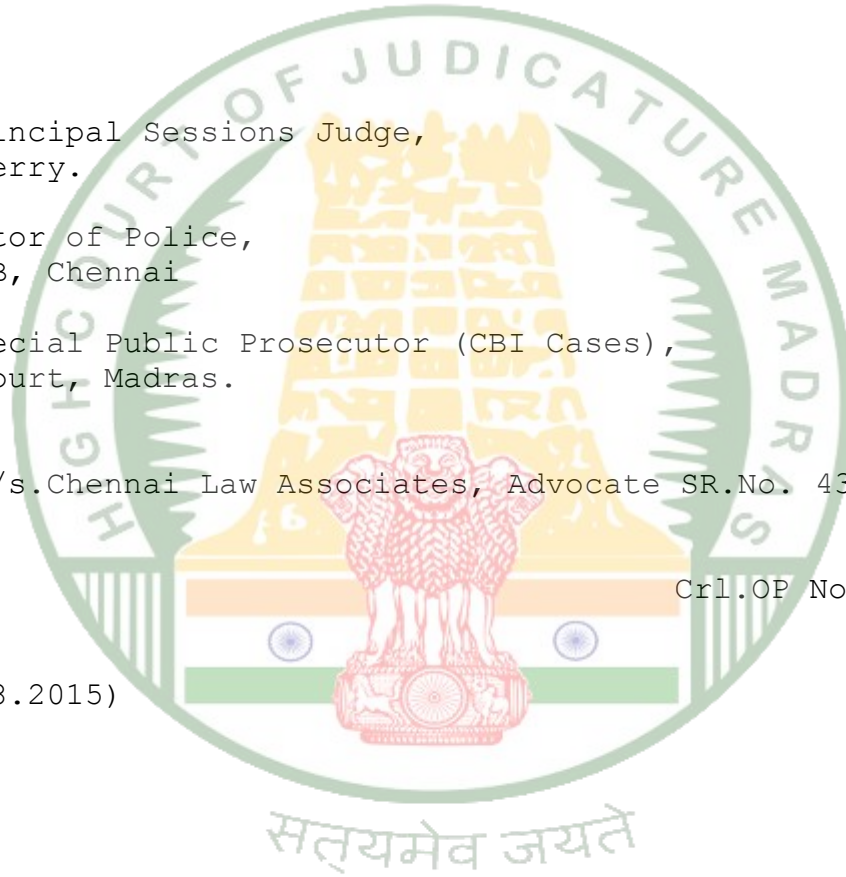
To

1. The Principal Sessions Judge,
Puducherry.
2. Inspector of Police,
CBI/ACB, Chennai
3. The Special Public Prosecutor (CBI Cases),
High Court, Madras.

1 CC to M/s.Chennai Law Associates, Advocate SR.No. 43508

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KV (CO)
PSI (27.08.2015)



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