

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.1157 of 2015

Dr.Deepak Subramanian
Consultant/General Surgeon,
Fortis Malar Hospital,
Adyar, Chennai - 600 020. ... Petitioner

vs.

1.Sahul Hameed
S/o.Late Habib Mohamed

2.Thahir
S/o.Late Sinalabey

3.The Intelligence Officer,
NCB,
Chennai Zonal Unit,
Chennai - 600 090. ... Respondents

Criminal Revision filed under section 397 and 401 Cr.P.C.
against the order passed by I Additional Special Judge, I
Additional Special Court under the NDPS Act, Chennai - 600 104,
in Crl.M.P.No.884 of 2015 in C.C.No.24 of 2011 dated 03.08.2015.

For Petitioner : Mr.K.Subramanian, senior counsel
for Mr.S.Punniyakotti

For Respondent : Mrs.Mamta Pandey [R1 & R2]
Mr.N.P.Kumar,
Special Public Prosecutor (NCB cases) [R3]

O R D E R

This revision challenges the order of learned I Additional
Special Judge, Special Court under the NDPS Act, Chennai - 600
104, passed in Crl.M.P.No.884 of 2015 in C.C.No.24 of 2011 on
03.08.2015.

2. Respondents 1 and 2 are accused in case pending trial in C.C.No.24 of 2011 on the file of learned I Additional Special Judge, Special Court under the NDPS Act, Chennai - 600 104. Petitioner, a Doctor by profession, was examined as PW-7 on 21.04.2015. His cross-examination was also completed on the very same day. After a lapse of fifteen days, the accused filed a petition seeking recall of PW-7 towards proof of his being a Doctor and of his being attached to Fortis Malar Hospital, Adyar, Chennai. Despite objection of learned Special Public Prosecutor informing that summons had been issued by the Court below and served at Fortis Malar Hospital, Adyar, Chennai, the Court below, under order dated 03.08.2015, thought it proper to afford an opportunity to the accused to canvass the contention by summoning PW-7. Such order has been challenged by way of the present revision.

3. Heard learned senior counsel for petitioner, learned counsel for respondents 1 and 2 and learned Special Public Prosecutor (NCB cases) for third respondent.

4. Though learned senior counsel for petitioner submitted that the petitioner is a most famous surgeon, conducting 6 to 7 operations everyday and requiring his presence before Court below towards proving his identity would cause him difficulty and that instead of requiring the presence of the petitioner before the Court below, recourse may be had to Section 91 Cr.P.C., this Court is of the view that where in the course of cross-examination of PW-7, the accused have not considered it necessary to question the credentials of PW-7, they ought not to have been permitted a further opportunity to do so. If any doubt was entertained by the accused regards the identity/credentials of PW-7, the accused was upon duty to raise the issue in the course of cross-examination. This Court is of the view that the order of the Court below totally is erroneous.

This Criminal Revision stands allowed. The order of learned I Additional Special Judge, Special Court under the NDPS Act, Chennai - 600 104, passed in CrI.M.P.No.884 of 2015 in C.C.No.24 of 2011 on 03.08.2015, stands set aside. Any amount deposited by the accused pursuant to the order under challenge shall be refunded.

Sd/-
Assistant Registrar(CCC)

True Copy

Sub Assistant Registrar

To

1.The I Additional Special Judge,
Special Court under the NDPS Act,
Chennai - 600 104.

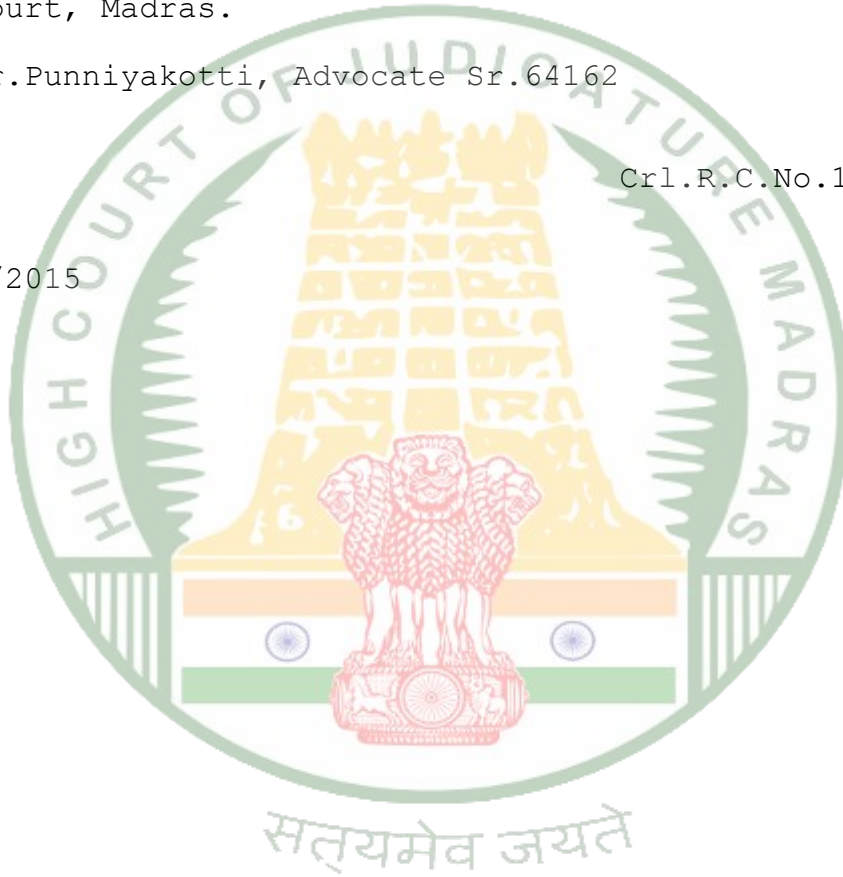
2.The Intelligence Officer,
NCB,
Chennai Zonal Unit,
Chennai - 600 090.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Punniyakotti, Advocate Sr.64162

Cr1.R.C.No.1157 of 2015

kji[col]
srg 11/12/2015



WEB COPY