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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2015

CORAM

THE HONOURABLE MR. JUSTICE A.SELVAM

Crl. R.C.No.13 of 2015

R.Jayapal

... Petitioner/Accused No.5

vs.

State rep.by
The Inspector of Police
CBI/ACB/Chennai
(RC.No.34A & 35A of 2007)

... Respondent/Complainant

Revision under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in CMP.No.946/2011 in CC.No.10/2010 dated 09.09.2014 on the file the Second Additional District Judge Special Judge (CBI CASES) Coimbatore and allow the CMP.NO.946 of 2011 by discharging the petitioner from the above case C.C.NO.10/2010 and to pass necessary orders.

For petitioner : Mr.B.Kumarasamy

For respondent : Mr.K.Srinivasan,
Special Public Prosecutor
for CBI Cases

O R D E R

This Criminal Revision Case has been directed against the order dated 9.9.2014 passed in CMP No.946 of 2011 in CC.No.10 of 2010 by the II Additional District Judge (Special Judge) CBI Cases, Coimbatore. The revision petitioner as petitioner has filed the petition in question under section 239 of the Code of Criminal Procedure, 1973 on the file of the court below praying to discharge him from the proceedings of Calendar Case No.10 of 2010, wherein the present respondent has been shown as sole respondent.

2. It is averred in the petition that the petitioner has served as Inspector of Customs in Customs Office, Tirupur from 9.12.2002 to



23.01.2003 and he has no connection whatsoever with the allegations made in the final report. But unfortunately and without any basis, the petitioner has been arrayed as 5th accused in C.C.NO.10 of 2010. The respondent has filed a final report under section 120(b), r/w 420 of the Indian Penal Code and also under section 7 r/w 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988. Since the petitioner has done his service in good faith and since he has had no connection whatsoever with the alleged offence, the present petition has been filed for getting the relief sought for therein.

3. The Court below after considering the rival contentions raised on either side has dismissed the petition. Against the dismissal order, the present Criminal Revision Case has been preferred at the instance of the petitioner as the revision petitioner.

4. The learned counsel appearing for the petitioner has contended that even in the approver evidence, it has not been specifically pointed out the role alleged to have been played by the petitioner. The specific evidence given by the approver is that he has given Rs.10,000/- every month to the Deputy Commissioner by name Jeyaraman and further the petitioner has served as Inspector of Customs from 9.12.2002 to 23.01.2003 and in fact, the petitioner has not committed any of the offence mentioned in the final report and under the said circumstances, the petition in question has been filed for getting discharge, but the court below without considering the nature of role alleged to have been played by the petitioner has erroneously dismissed the petition and therefore the order passed by the court below is liable to be set aside.

5. As a repartee to the contentions raised on the side of the revision petitioner, the learned Special Public Prosecutor appearing for the respondent has contended that even in the evidence adduced by the approver, it has been specifically stated that the petitioner has also received bribe from him and the court below after considering the evidence given by the approver and also the nature of role alleged to have been played by the petitioner has rightly dismissed the petition. Under the said circumstances, the order passed by the court below does not require any interference.

6. The only point that has winched to the fore is as to whether the petitioner can be discharged from the proceedings of C.C.NO.10 of 2010 for the reasons stated in the petition?

7. As pointed out earlier, the specific contention put forth on the side of the petitioner is that he served as Inspector of Customs



from 9.12.2002 to 23.01.2003 and he has no connection whatsoever with the alleged offence.

8. For considering the divergent submissions made on either side, the Court has to look into the evidence given by the alleged approver.

9. One Biju Alias has been examined as an approver and in fact this Court has perused the entire evidence adduced by him, wherein he candidly stated to the effect that so many persons including the petitioner have received bribe from him for achieving his sinister motive.

10. Of course, it is true that the said approver has lastly stated to the effect that every month he has given Rs.10,000/- to the Deputy Commissioner by name Jeyaraman and that itself cannot be a basis for coming to a conclusion that the other portion of evidence given by the said approver cannot be looked into.

11. Even at the risk of repetition, the Court would like to point out that the approver in categorical terms has stated that the petitioner has also received bribe from him. It is an admitted fact that the petitioner and others are facing charges under section 120 (b), r/w 420 of the Indian Penal Code and also under section 7 r/w 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

12. Considering the nature of offence alleged to have been committed by the accused including the petitioner and also considering the specific role alleged to have been played by the petitioner has been clearly mentioned by the approver, this Court is of the view that the petitioner cannot be discharged from the proceedings of C.C.No.10 of 2010. The court below after analyzing the available evidence on record has clearly found that prima face case is made out against the petitioner and therefore the conclusion arrived at by the court below is perfectly correct and altogether, the present revision deserves to be dismissed.

13. In fine, this Criminal Revision Case is dismissed and the order passed in CMP No.946 of 2011 in C.C.No.10 of 2010 is confirmed.

Sd/-

Assistant Registrar(J)

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Sub Assistant Registrar



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1. The II Additional District Judge /
Special Judge(CBI Cases), Coimbatore.
2. The Special Public Prosecutor (For CBI Cases),
High Court, Madras.

+1cc to M/s.S.Gunalan, Advocate, S.R.No.40905

Cr1.R.C.No.13 of 2015

CA(CO)
CA(19/08/2015)