

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.8.2015.

CORAM

THE HON'BLE MR.JUSTICE A.SELVAM

Criminal Revision Case No.544 of 2015

1. Jagmohan Meena
2. V.Asai Thampi
3. T.Manjula
4. B.Franklin Benjamin
5. N.Giriprasad

... Petitioners

vs.

State by
Inspector of Police,
SPE:CBI:ACB
Chennai.

... Respondent

Criminal Revision Case against the order dated 19.5.2015 made in Crl.M.P.No.5945 of 2014 on the file of the XIII Additional Sessions/Special Judge for CBI Case, Chennai.

For petitioners : Mr.R.Ravindran

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

ORDER

This criminal revision case has been directed against the order passed in Crl.M.P.No.5945 of 2014 dated 19.5.2015 by the XIII Additional Sessions/Special Judge for CBI Case, Chennai.

2. The revision petitioner, as petitioner, has filed the petition in question praying to set aside the tender of pardon given under section 306 of the Code of Criminal Procedure, 1973 by the Chief Metropolitan Magistrate, Chennai.

3. It is averred in the petition that the petitioners have been arrayed as accused Nos.8, 9, 10, 11 and 12 in C.C.No.1 of 2013 pending on the file of the court below. Further, it is averred in the petition that the Chief Metropolitan Magistrate has granted tender of pardon to some of the accused. Since the offences alleged to have been committed by all the accused are triable by the court below, the Chief Metropolitan Magistrate, Chennai is not entitled to invoke section 306 of the Criminal Procedure Code, 1973 and therefore, the proceedings taken by the Chief Metropolitan Magistrate are liable to be set aside.

4. On the side of the respondent, a detailed counter has been filed wherein it has been contended to the effect that concurrent powers are vested with the Chief Metropolitan Magistrate and also the Special Court so as to grant tender of pardon under section 306 of the Code of Criminal Procedure, 1973 and therefore, the present petition deserves to be dismissed.

5. On the basis of rival contentions raised on either side, the court below has dismissed the petition filed in Crl.M.P.No.5945 of 2014 and against the order of dismissal, the present criminal revision case has been preferred.

6. The Learned counsel appearing for the revision petitioner has contended that the petitioners and other accused are said to have committed offences punishable under sections 7, 8, 13(2) read with 13(1)(d) of the Prevention of Corruption Act alongwith other sections of the Indian Penal Code and under the said circumstances, as per section 5(2) of the Prevention of Corruption Act, only the Special Judge is empowered to give tender of pardon, whereas in the present case, tender of pardon has been granted to some of the accused by the Chief Metropolitan Magistrate, Chennai. Under the said circumstances, the present petition has been filed, but the court below, without considering the correct legal position, has erroneously dismissed the same and therefore, the order passed by the court below is liable to be set aside.

7. The learned Special Public Prosecutor appearing for the respondent has also equally contended that the power mentioned in section 306 of the Code of Criminal Procedure, 1973 can be exercised concurrently either by the concerned court or by any Magistrate, under the said circumstances, the Chief Metropolitan Magistrate, Chennai has granted tender of pardon to some of the accused and the court below, after considering the provision of section 306 of the

said Act, has rightly dismissed the petition and therefore, the impugned order passed by the court below need not be set aside.

8. It is an admitted fact that the offences alleged to have been committed by the petitioners and other accused are triable only by the XIII Additional Session Judge/Special Judge for CBI Cases, Chennai.

9. The only point that has to be decided in the present criminal revision case is as to whether the Chief Metropolitan Magistrate, Chennai is having power to grant tender of pardon to some of the accused under section 306 of the Code of Criminal Procedure, 1973?

10. The learned Special Public Prosecutor appearing for the respondent has befittingly drawn the attention of the court to the decision reported in P.C.MISHRA v. STATE (CBI) ((2014) 14 SCC 629), wherein the Honourable Supreme Court has held that at the stage of investigation, i.e., before committal of case and filing of charge sheet, both Chief Judicial Magistrate/Metropolitan Magistrate as well as the Special Judge have concurrent jurisdiction under section 306 of the Code of Criminal Procedure, 1973.

11. Even a cursory look of the decision rendered by the Honourable Supreme Court, this court is of the view that the power available under section 306 of the said court can be exercised either by the concerned court or any Judicial Magistrate.

12. For better appreciation, it has become shunless to look into the provision of section 306 of the Code of Criminal Procedure, 1973 and the same reads as follows:-

"306. Tender of pardon to accomplice.

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any, stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to-

(a) any offence triable exclusively by the Court of Session

or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952).
.... "

13. On a mere reading of the provision of the said Section, it is made clear to the court that even an offence triable exclusively by a court of Sessions or by court of Special Judge appointed under the Criminal Law Amendment Act, 1952, tender of pardon can be granted by any competent Magistrate.

14. In the instant case, as pointed out earlier, some of the offences alleged to have been committed by the petitioners and other accused are exclusively triable by the court below. But, the only point that arises for consideration in the present criminal revision case is as to whether the Chief Metropolitan Magistrate is empowered to invoke section 306 of the Code of Criminal Procedure, 1973. As pointed out by the Honourable Supreme Court in the decision referred to supra and also as per the provision of section 306 of the Code of Criminal Procedure, 1973, it is easily discernible that the Chief Metropolitan Magistrate can very well invoke section 306 of the Code of Criminal Procedure, 1973 in the present case and no blemish could be attached to the proceedings taken by the Chief Metropolitan Magistrate, Chennai. The court below, after considering the correct legal position, has rightly dismissed the present petition.

15. In view of the foregoing elucidation of both legal and factual aspects, this court has not found any acceptable force in the contention put forth on the side of the revision petitioners and therefore, the present criminal revision case deserves to be dismissed.

16. In fine, this criminal revision case is dismissed. The order passed in CrI.M.P.No.5945 of 2014 by the XIII Additional Sessions/Special Judge for CBI Case, Chennai is confirmed.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS III)

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Sub Assistant Registrar

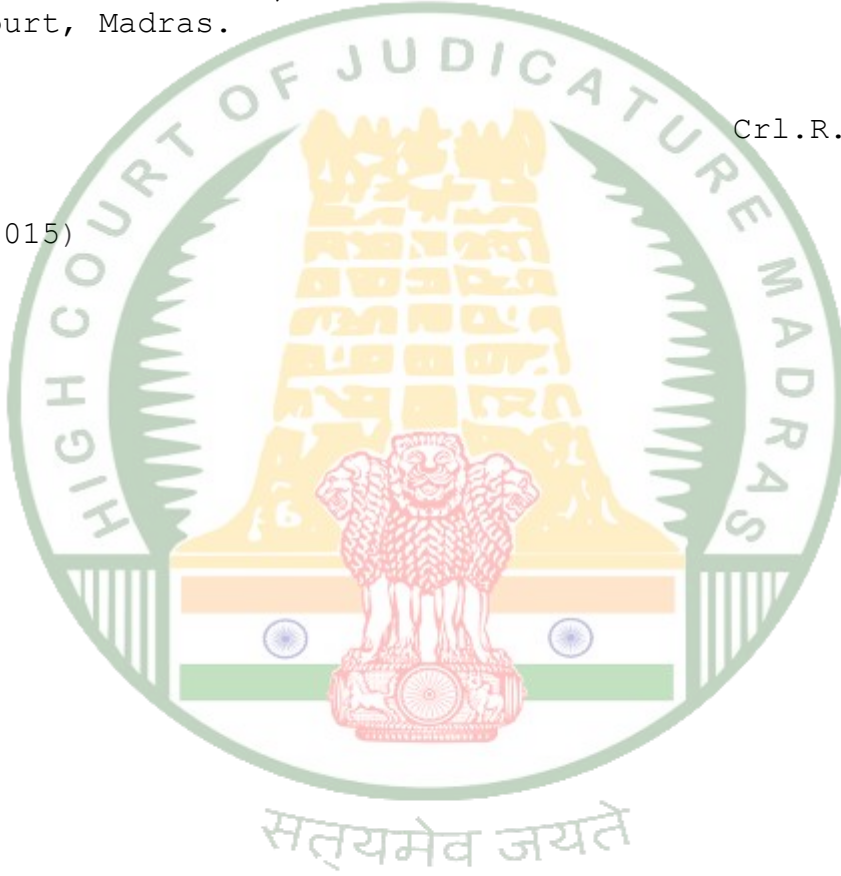
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To

1. XIII Additional Sessions/
Special Judge for CBI Cases,
Chennai.
2. Inspector of Police,
SPE:CBI:ACB
Chennai.
3. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.544 of 2015

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



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