

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.O.P No.20021 of 2015
& M.P.No.1 of 2015

Loganathan

.. Petitioner

Vs

State rep. by:
Deputy Superintendent of Police
Vigilance and Anti Corruption
Salem

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 23.07.2015 passed in C.M.P.No. 508 of 2015 in Spl. C.C.No.1 of 2009 by the learned Special Judge and Chief Judicial Magistrate, Namakkal.

For Petitioner : Mr.K.V.Sridharan
For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been directed against the order dated 23.7.2015 passed in C.M.P.No.508 of 2015 in Special C.C.No.1 of 2009 by the Chief Judicial Magistrate, Namakkal.

2. It is stated in the petition that the petitioner has been shown as sole accused in Special C.C.No.1 of 2009 on the file of the court below, wherein necessary charge has been framed against the petitioner under sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Further, it is stated in the petition that on the side of the prosecution, P.Ws.1 to 14 have been examined, but, unfortunately, they have not been cross-examined. Under the said circumstances, the present petition has been filed under section 311 of the Code of Criminal Procedure, 1973 praying to recall P.Ws.1 to 14.

3. The Court below after considering the divergent contentions raised on either side and also on the basis of the directions given by this Court has dismissed the petition. Against the order of dismissal, the present Criminal Original Petition has been preferred by the petitioner.

4. The learned counsel appearing for the petitioner has contended that due to poverty, the petitioner has not been able to appoint a counsel from Chennai. Under the said circumstances, P.Ws.1 to 14 have not been cross-examined and therefore for giving sufficient opportunity, the order passed by the court below is liable to be interfered with.

5. It is an admitted fact that in Special C.C.No.1 of 2009, the petitioner has been arrayed as sole accused and he faced the charge under sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. It is also equally an admitted fact that on the side of the prosecution, P.Ws.1 to 14 have been examined, but they have not been cross-examined and in order to cross-examine those witnesses, the present petition has been filed under section 311 of the Code of Criminal Procedure, 1973.

6. The Court below has dismissed the petition mainly on the ground that already a specific direction has been given by this Court so as to dispose of Special C.C.No.1 of 2009.

7. Considering the gravity of charge framed against the petitioner and also considering the fact that no prosecution witness has been cross-examined on the side of the petitioner, this Court is of the view to take a lenient view and for that purpose, he must be given sufficient opportunity to put forth his defence. Under the said circumstances, the impugned order passed in C.M.P.No.508 of 2015 in Special C.C.No.1 of 2009 is liable to be set aside.

8. In fine, this Criminal Original Petition is allowed and the order dated 23.7.2015 passed in C.M.P.No.508 of 2015 in Special C.C.No.1 of 2009 by the Chief Judicial Magistrate, Namakkal is set aside and the petition filed in C.M.P.No.508 of 2015 is allowed. The petitioner is directed to pay Rs.5,000/- (Rupees five thousand only) in Legal Services Authority, Namakkal and only after filing the receipt, Chief Judicial Magistrate, Namakkal is directed to permit the petitioner to cross-examine P.Ws.1 to 14. Consequently, M.P.No.1 of 2015 is dismissed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. Chief Judicial Magistrate, Namakkal
2. Deputy Superintendent of Police
Vigilance and Anti Corruption
Salem
3. The Public Prosecutor,
High Court, Madras.

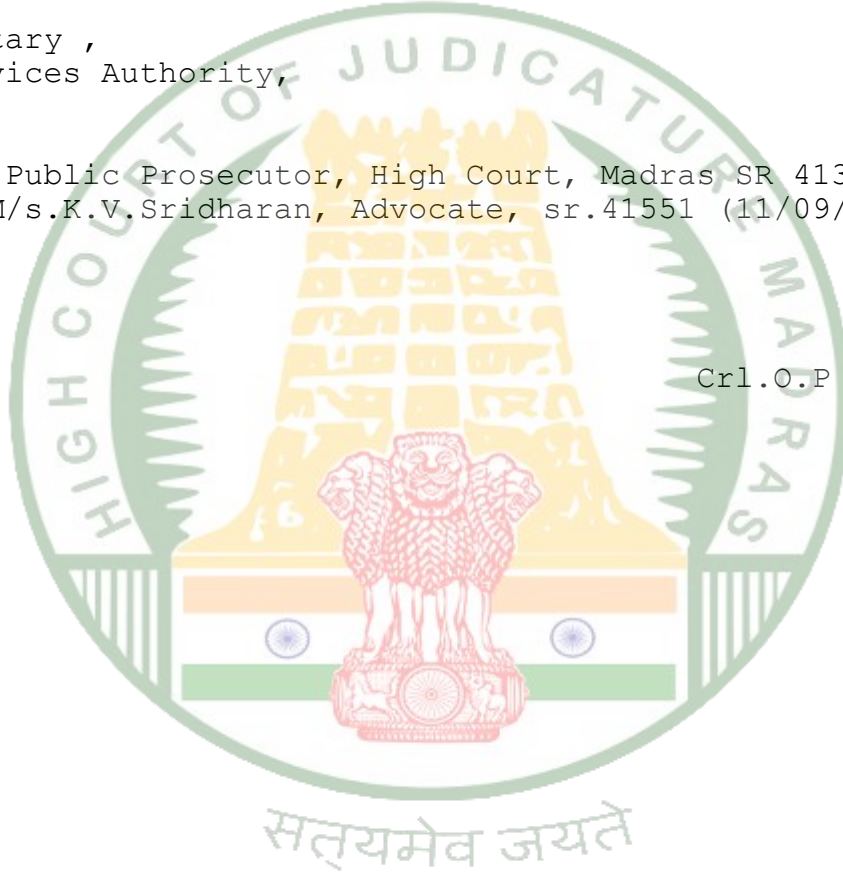
Copy to:

The Secretary ,
Legal Services Authority,
Namakkal.

+ 1 cc to Public Prosecutor, High Court, Madras SR 41322
+1 cc to M/s.K.V.Sridharan, Advocate, sr.41551 (11/09/2015)

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