

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-11-2015

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THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Writ Petition Nos. 37501 and 37502 of 2015

P. Shanmugasundaram ... Petitioner in both WPs
Rep.by his Father T.Palanisamy

Vs.

1. State
Rep. by the Inspector of Police
CBI / ACB / Chennai
2. Union of India
Rep. by its Secretary
Ministry of Home Affairs
North Block, New Delhi
3. The Secretary
Ministry of Law & Justice
Union of India, New Delhi ... Respondents in both WPs

Prayer in both WPs :- Petitions under Article 226 of the Constitution of India for issuance of Writ of Declaration declaring Section 318 Cr.P.C. as unconstitutional and ultravires of the Constitution of India.

For Petitioner : Mr. C.S. Dhanasekaran

For R 1 : Mr. S.T.S. Murthi,
Government Pleader
Assisted by
Mr. R. Shanmugasundaram,
Government Advocate

For RR 2 & 3 : Mr. K. Gunasekar, SPCCG

COMMON ORDER
[was made by PUSHPA SATHYANARAYANA, J.]

Since the prayer in the instant writ petitions is in relation to the constitutional validity of Section 318 Cr.P.C. and to declare the same as unconstitutional and ultravires of the Constitution of India, they are taken up together and are being disposed of by a common order.

2. From the materials available on record, it is seen that the petitioner, who has been prosecuted and ranked as 4th accused in C.C. Nos. 10 of 2009 and 11 of 2009 for the alleged offences under Sections 120B, 419, 420, 468, 471 IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, was directed by the Special Judge for CBI Cases, Coimbatore, to face trial. Pursuant to the same, the father of the petitioner filed an application under Section 318 of the Cr.P.C. before the Court of II Additional District Judge and Special Judge for CBI Cases, Coimbatore, to take note of the physical condition of the accused on the ground that the accused has Neuro problem right from 2006 due to stroke on the right side of the Head and he is not able to read because of his memory loss. It is also stated that the accused is hard of hearing and lost his speech. Finding that the accused was unable to speak and write during the proceeding, the learned II Additional District Judge (CBI Cases), Coimbatore, by order dated 12.7.2011 in C.M.P. Nos. 160 of 2011 and 192 of 2011 respectively, directed the accused to appear before the Medical Board constituted in accordance with law and for the assessment of his physical condition.

3. Accordingly, the Medical Board, Coimbatore Medical College Hospital, Coimbatore, after examination of the accused, filed its report opining that the accused lost his speech and is unable function independently and to write because of paralysis of Right upper and lower limb. In such circumstance, the accused has come up before this Court through his father.

4. The contention of the petitioner is that his inability to understand and answer the charges is of greater concern for the Judge to decide the case. Learned counsel for the petitioner, relying on the principle of "audi alterem partem", contended that the trial of the case could not be allowed to continue due to the physical condition of the petitioner. The main grievance ventilated before this Court is that the object

of Section 318 Cr.P.C. in respect of the understanding of the accused of the proceedings wherein he is charged, is not in consonance with the very object and reasoning of the Code.

5. Heard the learned counsel appearing for the parties and perused the records.

6. An enactment of the legislature cannot be struck down merely by saying that it is arbitrary or unconstitutional by issuing a Writ of Declaration at the instance of the petitioner, who is canvassing this case in an individual capacity. Indisputably, the offence alleged against the petitioner is under the Prevention of Corruption Act, which is to be tried with all seriousness. Provisions of Section 318 Cr.P.C. make it clear that the same applies to persons who do not understand the proceedings. But when the claim is that the accused is unable to understand the proceedings due to unsoundness of mind, the Section has no application. A perusal of the report filed by the Medical Board does not reflect anything with regard to the deficiency in mental faculty of the petitioner and that it has clearly stated that the accused does not suffer from any psychiatric illness. Though great caution and diligence are necessary in the trial of a person like the petitioner, who is speech impaired, yet, if it be shown that such a person had sufficient intelligence to understand the character of his criminal act, he is liable to be punished. Deaf and dumb persons as much liable to be punished for offences committed by them as any other person is. If the mind of the accused is sound, his inability to hear and speak does not excuse him from criminal liability. More over, there is no bar provided under Section 318 Cr.P.C. for conducting the trial.

In fine, the Writ Petitions fail and stand dismissed as devoid of merits, but, without costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. Inspector of Police
CBI / ACB / Chennai
2. Secretary
Union of India
Ministry of Home Affairs
North Block, New Delhi
3. The Secretary
Ministry of Law & Justice
Union of India, New Delhi

+1cc to Mr.Su.Srinivasan, Advocate, S.R.No.64751

+1cc to Mr.K.Gunasekar, Advocate, S.R.No.64551

+2cc's to Mr.C.S.Dhanasekaran, Advocate, S.R.No.64676 & 64677

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SVI (CO)
CA(14/12/2015)



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