

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL. RC.No.1353 of 2016

A. Chinnasamy

.. Petitioner

Vs.

The State rep. By its
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Dharmapuri.
(V& AC Crime No.12/Ac/2010)

.. Respondent

Prayer:- Criminal Revision Case filed under Section 397 of Cr.P.C., to revise the order passed by the Special Court for Prevention of Corruption Act, Salem dated 07.11.2016 in Crl.M.P.No.770 of 2016 in Spl.C.C.No.2 of 2015.

For Petitioner : Mr. M.Vijayakumar
For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

ORDER

This Criminal Revision Case has been filed under Section 397 of Cr.P.C., against the order passed by the Special Court for Prevention of Corruption Act, Salem dated 07.11.2016 in Crl.M.P.No.770 of 2016 in Spl.C.C.No.2 of 2015.

2. Aggrieved with the order passed by the trial court, the petitioner has filed this revision petition under Section 397 Cr.P.C., to revise the order dated 07.11.2016 in Crl.M.P.No.770 of 2016 in Spl.C.C.No.2 of 2015 on the file of Special Court for Prevention of Corruption Act, Salem.

3. The main contention of the petitioner is that

(i) when the matter was posted before the trial court for framing of charges, the petitioner, in order to meet his counsel in Chennai has come down to Chennai and hence, he could not appear before the trial court. This petitioner has filed a petition u/s.317 of Cr.P.C., and the

same was dismissed by the trial court and NBW was issued against him. Aggrieved with the order passed by the trial court, the petitioner is now before this court.

(ii) The learned Special Judge also fails to consider that the petitioner has filed the application to condone his absence on 17.10.2016. As the petitioner filed clarification petition and also the writ petition in W.P.No.37136 of 2016 against sanction for prosecution are pending, the petitioner has filed genuinely the petition to condone his absence and adjournment for eight weeks. This is only second hearing after the dismissal of the quash petition.

(iii) The matter came up for hearing on 15.10.2016 and subsequently, the writ petition was adjourned. He has challenged all sanction for prosecution in the writ proceedings. Since he has having heart ailment and he is aged about 57 years, he did not appear before the trial court. Then he has already filed two recall applications and that was allowed.

4. The learned counsel for the Revision Petitioner would submit that he is aged about 57 years and he is having Coronary Artery Disease. Further, the writ is also pending and therefore, under these circumstances, the petitioner could not appear for one hearing. Even though he filed the petition u/s.317 of Cr.P.C., the trial court has dismissed the application without considering the facts and circumstances of the case. Now, he is ready to appear before the trial court. Non-Bailable Warrant issued against the Revision Petitioner by the Special Court has got to be revised.

5. Learned Additional Public Prosecutor would submit that purposefully / wantonly, the petitioner is not appearing before the trial court and evading from framing of charges. Therefore, the trial court has dismissed the petitions. Further he would submit that whatever the grievance he is having, he can agitate with the trial court. Therefore, the petition is liable to be dismissed.

6. Heard both sides.

7. I have considered the available records carefully.

8. On perusal of the petitions filed by the petitioner and submissions made by both side learned counsel and other available records on file, it is seen that when the matter came up for hearing before the trial court on 03.11.2016, the petitioner did not appear before the trial court and records show that he filed a petition u/s.317 of Cr.P.C., but the same was not considered by the trial court. The trial

court was not inclined to allow the petition and hence, dismissed the petition and issued NBW. Now the C.C.No.2/2015 stands posted to 02.12.2016.

9. According to the learned counsel for the petitioner since he has challenged the proceedings by way of filing of writ petition and same is pending before this court, he is waiting for the outcome of the writ proceedings. In such a situation, if the charges are framed, then his right will be curtailed.

10. According to the learned counsel for the prosecution, when the matter is posted for framing of charges, the petitioner has to necessarily appear before the trial court and he has any grievance, if any, he has to approach the trial court by filing discharge application and face the same.

11. Perused the available records and order passed by the trial court. Since the petitioner/accused has filed a writ petition and the same is pending, he had come down to Chennai to ascertain the position of writ proceedings and therefore, he could not appear before the trial court on the date of hearing. The reasons stated by the petitioner is satisfied by this court and therefore, the order passed by the trial court is set aside and trial court is directed to recall the warrant issued against the Revision Petitioner/accused. Further, it is directed that if the petitioner appear before the trial court on or before 02.12.2016 and file a discharge petition, if not filed already, the same has to be decided on merits without any further delay and then frame the charges soon after the disposal of the said discharge petition on the same day. The petitioner is directed to cooperate for the same for speedy trial.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gv

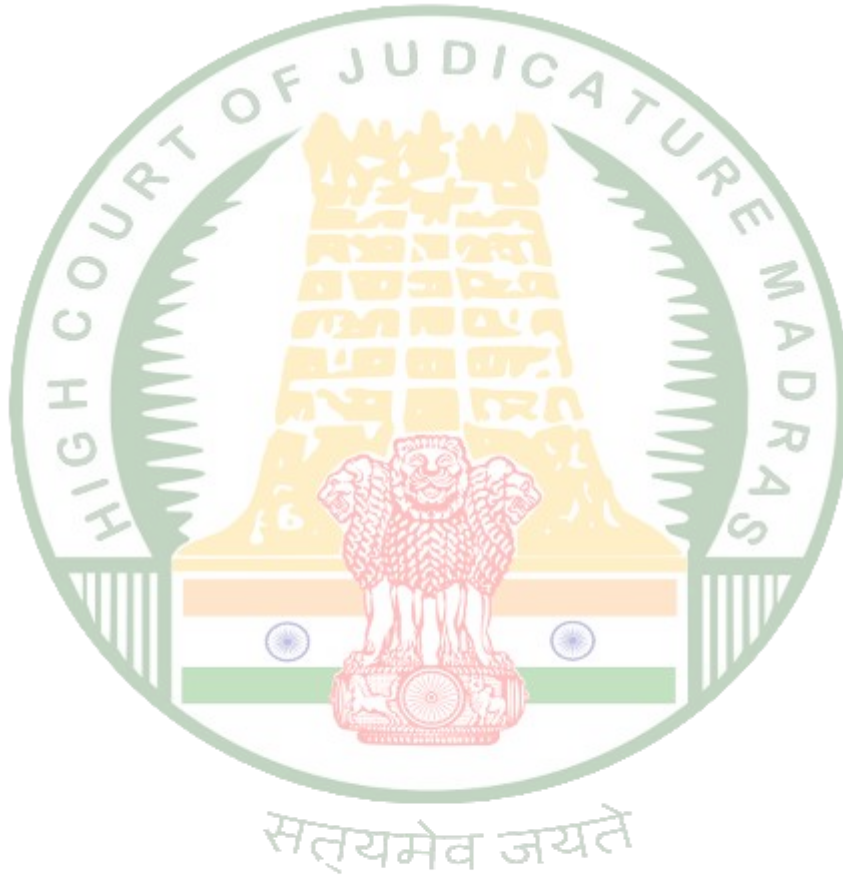
To
The Special Court for
Prevention of Corruption Act,
Salem

2 The Public Prosecutor
High Court, Madras

+1cc to Mr.M. Vijayakumar, Advocate, S.R.No.67147

mv(CO)
md(23/11/2016)

CRL. RC.No.1353 of 2016



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