IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-03-2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.R.C.No.259 of 2016 and

Crl.M.P.No.1797 of 2016

S.Geetha .. Petitioner/Accused-2

Vs.

The State
rep. by the Inspector of Police,
City Special Unit-III,
Vigilance & Anti-Corruption,
Chennai - 35. .. Respondent/Complainant

This Criminal revision is filed under Section 397 and 401 of Cr.P.C., to set aside the order passed in Crl.M.P.No.1549 of 2015 in C.C.No.13 of 2015, dated 18.01.2016 on the file of the learned Special Judge for P.C. Act Cases, Chennai.

For Petitioner : Mr.R.Vijaychandar

For Respondent : Mr.P.Govindarajan
Addl. Public Prosecutor

O R D E R

A-2 in C.C.No.13 of 2015 before the learned Special Judge under P.C. Act cases, Chennai challenges the dismissal of her discharge petition in Crl.M.P.No.1549 of 2015.

2 A-1 is District Manager, TAHDCO, Chennai A-2/petitioner employed as Computer Operator in the said office. Defacto complainant alleged that A-1 demanded Rs.2000/- as illegal gratification to discharge his public duty of recommending him for grant of loan for the purchase of autorickshaw under Self-Help Employment. Defacto complainant is not willing to grease his palm. He lodged complaint with the Vigilance and Anti-Corruption, Chennai. A trap was laid. Instead of A-1, A-2 fell into the trap, the phenolphthalein test conducted with regard to A-2. Her hands were soiled. Solution

collected and submitted to chemical lab for analysis and report. Incriminating report received. A-2 has been proceeded with for an offence under Section 12 of Prevention of Corruption Act, 1988 for her intentionally abetting of A-1 to commit the offence.

3 The learned Special Judge under P.C. Act cases took cognizance on the final report in C.C.No.13 of 2015 as against A-1 under Section 7, 13(1) (d) r/w 13(2) of Prevention of Corruption Act, 1988 and as against A-2 under Section 12 of Prevention of Corruption Act, 1988.

4 The accused were supplied with copies under Section 207 Cr.P.C. A-2/petitioner has filed Crl.M.P.No.1549 of 2015 under Section 239 Cr.P.C. to discharge him from the case.

5 The trial Court dismissed A-2's petition holding that there are incriminating materials if unrefutted it would a warrant conviction.

6 Aggrieved, A-2/petitioner has directed this revision.

7 According to the learned counsel for the revision petitioner, A-2 is a victim of circumstances. She was a temporary daily wage earner. Even her employment was not regular. There were intermittent appointment. Compared to A-1, she is only a small fry. There is no allegation that she has demanded bribe. She has no intention to receive money nor she was intentionally aiding or abetting A-1. Further, the Assistant Manager and certain other higher officials gave inconsistent version in their statement under Section 161 Cr.P.C. Absolutely, there is no basis or ground to proceed as against A-2. There is no material to sustain a charge under Section 12 of Prevention of Corruption Act as against A-2. No prima facie case as against her.

8 On the other hand, the learned Additional Public Prosecutor would submit that A-2 is being proceeded with for an offence under Section 12 of Prevention of Corruption Act as she had facilitated and abetted A-1 to commit the offence when the trap was made at the office of A-1, the tainted money was recovered from A-2/petitioner under seizure Mahazar and the solution collected in the presence of Mahazar witnesses also proved positive. There are statement of witnesses recorded under Section 161 Cr.P.C. implicating the petitioner. In the circumstances, the trial Court rightly dismissed her discharge petition.

9 I have anxiously considered the rival submissions, perused the impugned order and also relevant materials on record.

10 We have already given the necessary facts for the disposal of this revision petition. Let us not duplicate it.

11 For the purpose of section 239 Cr.P.C., the prosecution materials are such that if unrefutted it would warrant a conviction, then it would be case for framing of charge, otherwise it will be a case for discharge. In the administration of Criminal Justice, only at one stage benefit of doubt goes in favour of the prosecution that is the stage where the prosecution materials are such that there is suspicion, but materials must be incriminating in nature. At this stage, the materials to be noticed by the Court are complaint/ F.I.R., statement of witnesses recorded under Section 161 Cr.P.C. and prosecution documents and to see whether they disclose a prima facie case against the accused. This is the stage at which the Court can consider 'whether the accused might have committed the offence'. It is not the stage where the Court is not required to consider whether the accused has committed the offence'. For this purpose, the statement recorded under Section 161 Cr.P.C. will be considered as evidence. Of course, at this stage, they are untested testimony through cross examination. The Court must take the materials stated above at its face value and see whether they show commission of any offence. At this stage, the Court cannot shift or analyse the evidence, which have to be done at the time of appreciation of evidence.

12 As per the prosecution version, A-2/petitioner comes to the picture only at the time of trap because neither in the F.I.R. nor in the statement of the defacto complainant, there is any allegation against the petitioner. There are materials in the form of statement under Section 161 Cr.P.C. containing reference about A-2/petitioner having received the tainted money. There are statements recorded from the Mahazar witnesses which contains incriminating information with reference to A-2.

13 As regards the inconsistent and prevaricating statement of the person present when the trap was conducted are matters to be considered by the Trial Court at the appropriate stage of the trial.

14 In this view of the matter, I find no ground to interfere with the impugned order passed by the learned Special Judge.

15 In the result, this revision petition fails and it is hereby dismissed. Consequently, Crl.M.P.No.1797 of 2016 is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Special Judge under P.C. Act Cases,
City Civil Court Buildings, Chennai.

2. The Addl. Public Prosecutor,
High Court,
Madras.

3. The Inspector of Police,
City Special Unit-III,
Vigilance & Anti-Corruption,
Chennai-35.

+1cc to Public Prosecutor Sr.15798

Crl.R.C.No.259 of 2016 and
Crl.M.P.No.1797 of 2016

sr(CO)
srg(23/03/2016)