

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**CRIMINAL REVISION CASE No.855 OF 2016**

**ORDER:**

The present Revision is filed by the petitioner against the order in CrI.M.P.No.302 of 2015 in C.C.No.34 of 2014 dated 12.01.2016 on the file of II Additional Special Judge for CBI Cases, Visakhapatnam, wherein and where under the trial Court rejected the application filed under Section 227 of Code of Criminal Procedure, seeking discharge of the petitioner.

2. The respondent-CBI filed charge sheet against the petitioner and another for the offences punishable under Sections 7, 8 and 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988 and under Section 120-B of the Indian Penal Code.

3. Though learned counsel for the petitioner raised various grounds in the Revision, but during course of arguments, when the Court expressed its opinion learned counsel for the petitioner sought permission to withdraw this criminal revision case with liberty to raise new grounds which are not raised before the trial Court.

4. The issue as to whether the petitioner is permitted to file fresh application for discharge by raising new grounds which he has not raised earlier, came up for consideration in ***K.K. Patel and another Vs State of***

***Gujarat and another***<sup>[1]</sup> wherein, it was held, in Para No.10, as under :

***“Merely because the appellants did not raise the legal points based on Section 161 of the Bombay Police Act before the Metropolitan Magistrate, they are not estopped from canvassing on that additional ground also before the Sessions Court in revision as they were challenging therein the very issuance of process against them. The position may be different if the Sessions Judge had avoided dealing with the contention based on Section 161 (1) of the said Act on the premise that it could be raised before the trial Court. But when the Sessions Judge had opted to go into that question and rendered a decision on it on merits it is difficult to concur with the reasoning of the High Court that the said aspect would not be gone into by the High Court as the same was not raised before the trial Court.”***

5. Similar view was expressed by the Madras High Court in an unreported judgment in CrI.R.C.No.1170 of 2012 dated 20.07.2015.

6. Having regard to the above, the petitioner is permitted to withdraw this Criminal Revision Case, with liberty to file fresh application for discharge raising grounds which were not raised in the earlier application and the trial Court shall deal with the same in accordance with law.

7. Accordingly, the Criminal Revision Case is dismissed as withdrawn with liberty to file fresh application for discharge raising grounds which were not raised earlier before the trial Court and the trial Court shall deal with the same in accordance with law.

Miscellaneous petitions, if any, pending in this criminal revision shall stand closed.

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**JUSTICE C. PRAVEEN KUMAR**

11.04.2016

Rds

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**Dated : 11.04.2016**

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[\[1\]](#) (2000) 6 Supreme Court Cases 195