

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2017

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THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.1055 of 2017

A.Chinnasamy

... Petitioner

Versus

State by
Deputy Superintendent of Police
Vigilance & Anti Corruption
Salem.(V & AC Cr.No.12/AC/2010)

... Respondent

Criminal Revision Petition filed under Section 397 & 401 of Cr.P.C.
pleaded to set aside the order dated 21.07.2017 made by Special Judge,
(Special Court for Trial of cases under the Prevention of Corruption Act)
Salem in C.M.P.No.375/2017 in Special C.C.No.2/2016.

For Petitioner : Mr.V.Jeevagiridharan

For Respondent : Mr.R.Ravichandran,
Government Advocate (Crl.side)

ORDER

This Criminal Revision Petition has been filed to set aside the order
dated 21.07.2017 made by Special Judge, (Special Court for Trial of cases

under the Prevention of Corruption Act) Salem in C.M.P.No.375/2017 in Special C.C.No.2/2016.

2. The learned counsel for the petitioner would submit that the petitioner is the sole accused in Special C.C. No. 2 of 2015 registered for the offences punishable under Section 7 and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act. Seeking discharge from the criminal proceedings, the petitioner has inadvertently filed a discharge petition under Section 239 of Cr.P.C before the Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Salem, instead of filing it under Section 227 of Cr.P.C. Therefore, the petitioner has filed an amendment application in CrI.M.P. No. 375 of 2017 to amend the provision of the discharge petition to be read as one under Section 227 of Cr.P.C. instead of Section 239 of Cr.P.C. According to the learned counsel for the petitioner, the amendment petition was dismissed on the ground that even without the proposed amendment, the application preferred by the petitioner for discharge can be effectively adjudicated by the Court. Further, there is no bar for the Special Judge to consider a petition for discharge, notwithstanding the quoting of wrong provision of law. Further, Section 5 of the Prevention of Corruption Act confers powers on the Special

Judge to exercise all the powers and functions exercisable by Court of Sessions. However, without exercising the powers conferred under Section 5 of the Prevention of Corruption Act, the court below mechanically dismissed the amendment application.

3. I have carefully gone through the petition and also the order passed by the learned Special Judge. As per Section 227 of Cr.P.C., a petition for discharge shall be filed before the Magistrate Court and not the Sessions Court. A discharge petition before the Sessions Judge can be maintained only under Section 239 of Cr.P.C. In this case, the CBI has filed Police report against the petitioner and it is prosecuting the case against the petitioner. While so, the petition filed by the petitioner under Section 239 of the Cr.P.C. is not maintainable. The trial court rightly dismissed the petition for discharge on the ground of it's maintainability and I do not find any reason to interfere with the same.

4. In the result, the Criminal Revision Petition is dismissed.

10.08.2017

Index:Yes/No

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P.VELMURUGAN, J

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To

1. The Special Judge,
(Special Court for Trial of cases
under the Prevention of Corruption Act) Salem

2. The Deputy Superintendent of Police
Vigilance & Anti Corruption
Salem.(V & AC Cr.No.12/AC/2010

3. The Public Prosecutor
High Court, Madras.



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