IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :15.03.2018
Pronounced on :.16.03.2018

Coram:

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

Crl.R.C.No.326 of 2018
and
Crl.M.P.No.4043 of 2018

G.Elumalai ..Petitioner/Accused No.3

/versus/

The Inspector of Police,
CBI/ACB/Chennai,
(RC.MA.1 2016-A-0002) ..Respondent/Complainant

Criminal Original petition is filed under Section 401 of Cr.P.C. and 397 Cr.P.C. Praying to set aside the order passed in the discharge petition in C.M.P.No.2483 of 2017 in C.C.No.21 of 2017 on the file of the XIII Additional Special Court for CBI Cases dated 28.12.2017.

For Petitioner :Mr.S.Doraisamy

For Respondent :Mr.Srinivasan,
Spl.PP(CBI Cases)

O R D E R

The petitioner herein is the third accused in C.C.No.21 of 2017 on the file of the XIII Additional Special Court for CBI Cases, Chennai 104.

2. On completion of investigation, final report has been filed against this petitioner and others for the offence under Section 120B IPC r/w Sections 7,8,13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. This petitioner has filed an application before the trial Court under Section 239 Cr.P.C., to discharge him from the prosecution on the ground that there is no material produced by the prosecution either by way of statement or document that the petitioner had demanded or accepted or agreed to obtain any gratification from any person. In the absence of either demand or illegal gratification or acceptance of gratification, charge under Prevention of Corruption Act cannot be framed.

3. The petitioner as an Enforcement Officer, had participated in the inspection of M/s Saveetha Group of Institutions regarding evasion of Employees Provident Fund Contribution. Based on the allegation that one Durga Prasad (A1), Regional Commissioner-1, Regional Office, Employees Provident Fund Organisation, Chennai, demanded a sum of Rs.25lakhs from the representatives of M/s Saveetha Group of Institutions as illegal gratification for favouring the institution in the matter of evasion in Employees Provident Fund Contribution. Pursuant to the conspiracy to obtain illegal gratification, this petitioner and other accused from the Provident Fund Organisation had obtained Rs.15 lakhs.

4. As far as this petitioner is concerned, he has only discharged his duty as an Enforcement Officer and there is no evidence to show that he received any amount as illegal gratification. Mere Association with the other accused in an official capacity cannot be considered that he is the party to the conspiracy. When no material is seized from the petitioner herein and when no incriminating evidence placed before the Court against the petitioner, the prosecution ought to have dropped the proceedings against him. Since there is no sufficient material against this petitioner, the prosecution has filed final report including this petitioner as one of the accused. Hence, he must be discharged from the prosecution.

5. The investigating Agency has filed counter before the trial Court wherein it is pointed out the materials collected during the investigation and placed before the trial Court which material if proved will end in conviction of the petitioner.

6. The trial Court, after considering the contention made by the petitioner as well the respondent had dismissed the discharge petition. Aggrieved by that, the present criminal original petition is filed.

7. Heard the learned counsel appearing for the petitioner and the learned Special Public Prosecutor (CBI cases) appearing for the respondent.

8. The trial Court, after perusing the documents relied on by the prosecution as well as the confession statement of one Sudalai Muthu wherein the overtact of the petitioner herein in conspiracy, demand of illegal gratification and acceptance of illegal gratification a sum of Rs.14,50,000/- from Sudalai Muthu, the representative of M/s Saveetha Group of Institutions is prima faciely made out and therefore, there is no ground to discharge the petitioner herein. The trial Court has analysed the statements of LW-5, LW-6, LW-47 and relevant documents besides confession statement of LW-56 (Sudalai Muthu) and LW-57(Suriya Narayanan). Both are taken as approvers by the prosecution. The counter filed by the prosecution before the trial Court is explicit. The materials

which are sufficient to convict this petitioner if proved by the prosecution disentitle the petitioners to maintain discharge petition.

9. It appears from the materials that when Durga Prasad (A1) received the bribe from the approver, who is the representative of M/s Saveetha Group of Institution, this petitioner was present along with him. There are enough material to indicate that the petitioner herein had full knowledge and party to demand and acceptance of illegal gratification. Since prima facie case is made out against him sufficient to frame charges, the request to discharge the petitioner does not arise. Hence, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
1.XIII Additional Special Court for CBI Cases, Chennai.
2.The Inspector of Police, CBI/ACB/Chennai,
3.The Special Public Prosecutor for CBI Cases, High Court, Madras.

+ 1 cc to M/s. S. Doraisamy, Advocate Sr.20227

Copy to: The Section Officer,
Crl.Section, High Court, Madras.

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SR(CO)
EU(04/04/2018)