

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1401 of 2018
and
Crl.M.P.No. 16312 of 2018

B.Mariappan

.. Petitioner

Vs.

The Inspector of police
Special Investigation Cell,
Vigilance and Anti corruption,
Chennai - 28.

.. Respondent

PRAYER:

This Criminal Revision petition has been filed Under Section 397 r/w 401 of Cr.P.C to set aside the order dated 24.07.2018 and acquitting the petitioner / accused-2 in respect of offence under Section 120(B), 420 IPC in C.C.No.3573 of 2015 on the file of the Chief Metropolitan Magistrate, Allikulam, Chennai.

For Petitioner : Mr. G. Murugendran

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

O R D E R

The learned counsel for the petitioner has filed this petition under Section 397 r/w 401 of Criminal Procedure Code to set aside and acquitting the petitioner/accused-2 in respect of offence under Sections 120(B), 420 IPC in C.C.No.3573 of 2015 on the file of the Chief Metropolitan Magistrate, Allikulam, Chennai.

2. On perusal of the record it discloses the following facts, the petitioner was implicated for the offence under Sections 120(B), 420 of IPC in Crime No.7 of 2015. After charge sheet had been filed, the petitioner filed a discharge

application under Section 239 of Cr.P.C. The said application was dismissed on 24.07.2018. Challenging the above said impugned order the present Criminal Revision Petition is filed, though the prayer is not properly vouched.

3. The contention of the petitioner is that the respondent has registered an FIR against him in Crime No.07 of 2015 under Sections 420 of IPC r/w 120-B on 18.06.2015. The investigation reveals that the petitioner/A2 has committed offence of cheating & conspiracy and therefore the Section of law was altered into Section 120(B) & 420 IPC.

4. Though the learned counsel for the petitioner has raised several grounds for discharging the petitioner in the above said C.C.No.3573 of 2015, however after some arguments, he would submit that it would suffice the petitioner if he may be permitted to raise all the grounds before the trial court at the time of trial. He would further submit that, the petitioner's personal appearance may be dispensed with.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Crl. Side).

6. The learned Government Advocate would accede to the request of the petitioner to raise all the grounds during the Trial and the petitioner's appearance shall be dispensed with.

7. In the light of the above said submissions of the learned Counsel for the petitioner, the presence of the petitioner before the Trial Court shall be dispensed with on condition that, he shall be present for receiving the charge sheet, for answering the charge, at the time of questioning under Section 313, Cr.P.C and at the time of passing judgment. For the other hearings, the petitioner shall file a petition before the Trial Court under Section 317 Cr.P.C., giving an undertaking that he will not dispute the identity and the Counsel named by them in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Hon'ble Supreme court in Vinod Kumar Vs. State of Punjab [2015(1) MLJ (Crl) 288]. On such application being filed, the trial Court may liberally consider the same. If the accused adopts any dilatory tactics, it is open to the trial Court to insist upon his presence and remand him to custody as laid down by the Hon'ble Supreme Court in State of Uttar Pradesh Vs. Shambhu Nath Singh [JT 2001 (4) Sc 319]. If the petitioner

absconds, the trial Court shall direct to register a FIR against the petitioner, under Section 229-A IPC.

8. Accordingly, this Criminal Original Petition stands disposed of. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

smn/kas

To.

1. The chief Metropolitan Magistrate,
Allikulam, Chennai.
2. The Inspector of Police,
Special Investigation Cell,
Vigilance and Anti corruption,
Chennai - 28.
3. The Public Prosecutor
High Court of Madras
Madras 600 104

+1cc To Mr.G.Murugendran, Advocate in sr.no.86375 (10.01.2019)

Cr1.R.C.No.1401 of 2018

SSI(CO)
CS/04/01/2019

सत्यमेव जयते

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