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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16/11/2022

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.RC(MD)Nos.1098, 1100 and 1101 of 2022
and
Cr1.MP(MD)No.9785 of 2022

G.Thiyagarajan : Revision Petitioner/A2

Vs.

1.State the Deputy Superintendent
of Police,
Vigilance and Anti-Corruption Wing,
Madurai Detachment : Respondent/Complainant

COMMON PRAYER:- These Revisions have been filed under section 397 r/w 401 of the Criminal Procedure Code against the order passed by the Special Court for Prevention of Corruption Act Cases, Madurai, in Cr1.MP Nos.637, 638 and 639 of 2022 in Special Case Nos.46, 47 and 48 of 2011 pending on his file, vide, order dated 07/11/2022 by dismissing the petition filed by the petitioner under section 319 Cr1.P.C, for adding additional accused person.

For Petitioner : Mr.R.Anand
(In all cases)

For Respondent : Mr.S.Ravi
(In all cases) Additional Public Prosecutor

**COMMON ORDER**

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These revisions have been filed against the order passed by the Special Court for Prevention of Corruption Act Cases, Madurai, in CrI.MP Nos.637, 638 and 639 of 2022 in Special Case Nos.46, 47 and 48 of 2011 pending on his file, vide, order dated 07/11/2022 by dismissing the petition filed by the petitioner under section 319 Cr.P.C for adding additional accused person.

2.The facts in brief:-

The revision petitioner is facing the charges in Special CC No.46 of 2011 before the trial court under sections 120-B, 467, 167, 471, 420, 409 and 109 IPC and section 13(1)(c) and (d) r/w 13(2) of Prevention of corruption Act, 1988. The trial process is going to be completed. The petitioner was also put on questioning under section 313 Cr.P.C. After that, the case was about to be posted for argument on either side. The argument on the side of the prosecution was over and posted for defence side argument. At that time, a petition under section 319 Cr.P.C came to be filed by the petitioner to add PW8 namely Suresh Babu as an accused. That petition





to bar under proviso to section 132 of the Indian Evidence Act.

6. Whether the witness, who has made self-implication can be added as an accused was a matter for consideration by the Hon'ble Supreme Court in the case of R. Dineshkumar alias Deena Vs. State represented by Inspector of Police and others [(2015) 7 SCC 497]. The concluding portion of the above said judgment requires attention, which is extracted hereunder:-

"52. In the light of the above two decisions, the prosecution whether the prosecution has a liberty to examine any person as a witness in a criminal prosecution notwithstanding that there is some material available to the prosecuting agency to indicate that such a person is also involved in the commission of the crime for which the other accused are being tried, requires a deeper examination.

53. Unfortunately before us, except asserting the proposition no clear submission are made in this regard. In the circumstances, we do not



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propose to examine the proposition in the present case. However, in view of the above fact Section 307 Cr.P.C authorizes even a court conducting trial to tender pardon to such a person, we believe that the ends of justice in this case would be met by directing the trial court to grant pardon in favour of PW64 after following the appropriate procedure of law and record his evidence afresh."

7. So the only course available to the trial court now is to follow the dictum, that has been laid by the Hon'ble Supreme Court in the above said judgment.

8. The learned counsel appearing for the petitioner would submit that apart from the evidence of PW8, other materials are also available on record to add him as an accused. But those facts were not brought before this court for considering this point. It is for the trial court to consider the same. But the trial court, unfortunately, dismissed the petition filed by the petitioner on the ground of delay and noting the conduct of the petitioner.



9.No doubt that the petitioner has dragged the matter for 11 years. At the fag end of the stage, this petition has been filed. But at the same time, as mentioned earlier, the above said legal aspect has missed to bring the notice of the court as well as the parties, while hearing the above said petition. On that limited ground, I am of the considered view that the matter can be remitted back to the trial court.

10.Similarly, the issue whether the accused can maintain the petition filed under section 319 Cr.P.C is also a matter for consideration by the Larger Bench of the Hon'ble Supreme court as has been pointed by the Hon'ble Supreme Court in the case of **Sukhpal Singh Khaira Vs. State of Punjab [(2019) 6 SCC 638]**.

11.Similarly, the trial must also take into account, whether any other material is available, other than the self incriminating evidence by PW8 to add him as an accused. The trial court must give an opportunity to the prosecution and the revision petitioner as well as PW8 namely Suresh Babu.



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12. With the above said direction, these revisions **are allowed** and the impugned orders, that have been passed by the trial court are set aside and the matter is remitted back to the trial court.

13. In the light of the above said observation, since already 313 Cr.P.C proceedings is over, let the above said issue be decided within a period of thirty days from the date of receipt of a copy of this order. For that purpose, the time limit that was imposed by this court in CrI.OP(MD)Nos.25430 to 25440 of 2002, dated 31/03/2022 is also extended for two more months from the date of receipt of a copy of this order.

16/11/2022

Index:Yes/No
Internet:Yes/No

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Note: Issue order copy on 17/11/2022

To,

1. The Special Court for Trial
of cases under the Prevention of Corruption Act,



Madurai.

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- 2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Act,
Madurai.
- 3.The Additional Public Prosecutor,
Madura Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J

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