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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2023

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THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CrI.O.P.No.3810 of 2023

V.S. Sivaprasad

... Petitioner

Vs.

The State represented by,
Inspector of Police,
Special Investigation Cell
Vigilance and Anti-Corruption Wing
Crime No. 31/Ac/09/HQ
Chennai – 600 035.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order passed by the Learned Special Judge for cases under Prevention of Corruption Act, Chennai and recall P.W.2, P.W.4, P.W.6, P.W.7 and P.W.8 dated 23.01.2022 in CrI.M.P.No.37 of 2022 in C.C.01 of 2012 and pass orders.

For Petitioner : M/s P. Divakar for Mr.R. JohnSathyan

For Respondent : Mr.A. Gokula Krishnan
Additional Government Pleader



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ORDER

This Criminal Original Petition has been filed to set aside the order passed by the Learned Special Judge for cases under Prevention of Corruption Act, Chennai and recall PW.2, PW.4, PW.6, PW.7 and PW.8 dated 23.01.2022 in CrI.M.P.No.37 of 2022 in C.C.01 of 2012.

2.The case of the prosecution is that the petitioner worked as Section Officer in Institute of Distance Education, Admission-II Section, University of Madras, Chennai-5 from September 2008 till 24.07.2009. Whiles one Mrs. Rajeswari- P.W.3 W/o Dhanapalan remitted the necessary fees for getting provisional and Degree certificates. Thereafter, the said Danapalan met the petitioner/Accused at his office to get the certificate and the Petitioner/accused demanded an amount of Rs.500/- from him as illegal gratification for the issuance of said certificate and directed him to bring the amount on 24.07.2009. Subsequently on 24.07.2009 the petitioner/accused reiterated his earlier demand of Rs.500/- from Dhanapalan (P.W.1) in the presence of the official witness one Mr.Koteeswaran for giving provisional and Degree certificates, thereby the petitioner/ accused by corrupt or illegal



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means and by abusing official position as “ Public Servant obtained a sum of Rs.500/- from the witness Dhanapalan. Hence the petitioner who is public servant is punishable under Section 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988. Hence the case.

3. The learned counsel for the petitioner submits that he wants to recall P.W.1 to P.W.7, therefore the petitioner filed a petition in CrI.M.P.No.419 of 2017 on 21.02.2017 to recall P.W.1 to P.W.7 before the learned Special Judge for cases under Prevention of Corruption Act, Chennai and the learned Judge was pleased to allow the petition vide an order dated 06.03.2017. Since the petition for discharge was being heard at length, the learned counsel for the petitioner is unable to execute the order passed on 06.03.2017 in CrI.M.P.No.419 of 2017. Again, the petitioner has filed the CrI.M.P.No.1712 of 2019 to recall the witness and the same was dismissed vide order dated 13.03.2020. Hence he prays this Court to allow this petition.

4.The learned Additional Public Prosecutor raised objection by stating that already the petitioner has filed a petition to recall P.W.1 to P.W.7 in CrI.M.P.No.419 of 2017 on 21.02.2017 before the Learned Special Judge



for cases under Prevention of Corruption Act, Chennai and the learned Judge was pleased to allow the petition vide order dated 06.03.2017. In spite of the same, the learned counsel appearing for the petitioner has not cross-examined the witness and the cross examination of the witness was closed. Again, the petitioner has filed the Crl.M.P.No.1712 of 2019 to recall the witness and the same was dismissed vide order dated 13.03.2020. However, in order to circumvent the said order taking advantage of the fact that PW.8 the investigation officer was examined as Additional witness and through him the documents were marked. Hence he prays this Court to dismiss this petition.

5. Heard both sides and perused the materials available on record.

6. Considering the facts of the case it is made clear that in spite of the opportunity has been granted to the learned counsel for the petitioner in Crl.M.P.No.419 of 2017 on 21.02.2017 to recall P.W.2,P.W.3,P.W.4,P.W.5 and P.W.7 , since the petition for discharge was being heard at length, the learned counsel for the petitioner was unable to execute the order passed in Crl.M.P.No.419 of 2017 dated 21.02.2017 and another petition filed by the



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petitioner in Crl.M.P.No.1712 of 2019 to re-call P.W.2, P.W.3,P.W.4,P.W.6 and P.W.7 was dismissed, this Court is inclined to allow this petition and set aside the order passed by the learned Judge in Crl.M.P.37 of 222 in C.C.No.01 of 2012.

7. Accordingly this petition is allowed and the learned Trial Judge is directed to complete the Trial as expeditiously as possible.

03.03.2023

Speaking Order/Non-speaking Order
Index :Yes/No
smn

To.

The Inspector of Police,
Special Investigation Cell
Vigilance and Anti-Corruption Wing
Crime No. 31/Ac/09/HQ
Chennai – 600 035

2. The Public Prosecutor,
High Court of Madras.



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T.V.THAMILSELVI,J.

smn

Crl.O.P.No.3810 of 2023

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