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Crl.RC.No.1509 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.RC. No.1509 of 2023

V.Gurumurthy

.. Petitioner

Vs.

State by
The Inspector of Police,
SPE/CBI/ACB/Chennai.

..Respondent

PRAYER : Criminal Revision Petition has been filed under section 397 r/w.401 Cr.P.C. of Criminal Procedure Code to call for the records relating to the order passed in M.P.No.11241 of 2019 in C.C. No.3 of 2014 dated 22.02.2023 passed by Court to learned XII Additional Special Judge for CBI cases at Chennai and set aside the said order.

For Petitioner : Mr.T.Sivananthan

For Respondents :Mr.K.Srinivasan,
Special Public Prosecutor
For CBI Cases.



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ORDER

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This Revision petition is filed by the first accused challenging the order of the trial Court which has dismissed the discharge petition filed by the Petitioner.

2. The contention of the petitioner before the trial Court is that the case was registered by CBI against three persons alleging the falsification of accounts during the bullion trade and for fudging the accounts. This petitioner is a public servant, alongwith Shri.N.P.Agarwal (A-2), Proprietor of M/s.ShivShai & sons and his son Shri Ganesh Agarwal (A-3) were charge sheeted for alleged criminal conspiracy to cheat MMTC Limited to a tune of Rs.113.38 Crores.

3. Apart from conspiracy substantive offence of obtaining pecuniary advantage to a tune of Rs.41,700/- from A2 and A3 for purchasing Air ticket also been alleged in the final report which attracts offence under Sections 120-B r/w 420, 477-A of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.



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4. The petitioner before the trial Court contended that the other two co-accused were discharged by the Hon'ble High Court in Crl.O.P. No.11243 of 2014 & Crl.R.C. No.1191 of 2019 dated 17.04.2017. The SLP filed by the CBI before the Hon'ble Supreme Court is not yet taken on file in view of delay. Therefore, while co-accused been discharged, there cannot be charge for conspiracy against the single accused namely A1/public servant and furthermore, there is no material to show the alleged pecuniary advantage of getting Air ticket to Singapore for himself and his wife from co-accused.

5. The trial Court had considered the above submissions and dismissed the discharge application stating that prosecution has produced many documents to establish their case and also relied upon statement of official witnesses. The final report discloses involvement and participation of the petitioner in the criminal conspiracy and considering the *modus operandi*, the petition to discharge stands dismissed.

6. This Court after hearing the learned counsel for the petitioner



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and the learned Special Public Prosecutor (CBI) finds that out of three accused charge sheeted in C.C. No. 3 of 2014, as on date, two of them stand discharged and the prosecution is only against this petitioner. The offence of conspiracy for cheating and forgery along with the other two accused as on date cannot be framed, in view of the discharge of other two co-accused.

7. In the light of the fact that State has already preferred appeal against the discharge of A2 and A3, it is proper and fair to wait for the outcome of the appeal preferred by the State before the Hon'ble Supreme Court. Depending on the outcome of the appeal, the trial Court shall take further course of action. Till then, framing of charge against this petitioner shall be deferred. The State which has preferred appeal against the discharge of the other two accused shall pursue this appeal before the Hon'ble Supreme Court and report before the trial Court about the outcome of the appeal.

8. The state shall complete the said exercise preferably within a



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period of three months. The trial Court is directed to call C.C. No.3 of 2014 after three months and proceed further depending on the outcome of the appeal pending before the Hon'ble Supreme Court. Then, the petitioner herein shall have the liberty to canvass the merits of his defence subject to the order passed by the Supreme Court in respect of other two co-accused.

12.09.2023

Internet : Yes/No

Index: Yes/No

rkp

To

- 1.The XII Additional Special Judge for CBI cases at Chennai
- 2.The Inspector of Police,
SPE/CBI/ACB/Chennai.
- 3.The Special Public Prosecutor (CBI cases),
High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN, J.

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