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Crl.O.P.No.15032 OF 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

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THE HON'BLE MR.JUSTICE **VIVEK KUMAR SINGH**

Crl.O.P.No.15032 of 2024
in Crl.A.SR.No.23735 of 2024

State represented by,
The Inspector of Police,
City Special Unit-I,
Vigilance and Anti – Corruption,
Chennai 16.
(Crime No.3/AC/2018/CC-II)

... Petitioner

Vs.

1.S.Gunasekar
2.K.Ramesh
3.N.Sivakumar @ Bar Sivakumar

... Respondents

PRAYER : Criminal Original Petition filed under Section 378(4) of Criminal Procedure Code, pleaded to grant leave to file an appeal before this Court against the acquittal judgment made by the Special Court for the cases under Prevention of Corruption Act, Chennai in C.C.No.01 of 2020 dated 27.10.2023.

For Petitioner : Mr.S.Santhosh
Government Advocate (Crl.Side)



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ORDER

This Criminal Original Petition has been filed to grant leave to file a Criminal Appeal against the Judgment of acquittal in C.C.No.01 of 2020 dated 27.10.2023 on the file of the Special Court for the cases under Prevention of Corruption Act, Chennai.

2. Learned Government Advocate (Criminal Side) appearing for the petitioner submitted that based on the complaint given by the defacto complainant, a case in Crime No.3/AC/2018/CC-II has been registered against the accused. After detailed investigation, the final report has been filed and the same was taken on file in C.C.No.01 of 2020 before the learned Special Judge for the cases under Prevention of Corruption Act, Chennai. During the trial, the prosecution has examined 14 witnesses and marked 31 documents and also marked 6 material objects. But on the side of the accused, no oral and documentary evidence was let in. The learned Special Judge for the cases under Prevention of Corruption Act, Chennai, without taking into consideration of the evidence of prosecution witnesses, had acquitted the accused under Section



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248(1) of Cr.P.C. Hence, the petitioner prays to grant leave to file a Criminal Appeal against the Judgment of acquittal in C.C.No.01 of 2020 dated 27.10.2023 on the file of the Special Court for the cases under Prevention of Corruption Act, Chennai.

3. He further relied on the judgment of the Hon'ble Apex Court in *State of Maharastra vs. Sujay Mangesh Poyarekar* reported in (2008) 9 SCC 475 and the above judgment was followed by the Hon'ble Supreme Court in *State of Maharastra vs. Shankar Ganapthi Tahatol and others* reported in (2020) 1 SCC 608.

4. Heard the learned Government Advocate (crl.side) appearing for the petitioner and perused the materials available on record.

5. It is useful to refer to the paragraphs 19, 20 and 21 of the judgment of the Hon'ble Apex Court in *State of Maharastra vs. Sujay Mangesh Poyarekar* reported in (2008) 9 SCC 475.

“19. Now, Section 378 of the Code provides for filing of



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appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave



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should be granted.”

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6. In view of the above submissions and being satisfied with the reasons adduced in the affidavit filed in support of this petition, this Court is of the opinion that a *prima facie* case is made out for grant of leave. Thereby, Leave granted.

7. Accordingly, the Criminal Original Petition stands ordered. Registry is directed to number the Criminal Appeal, if it is otherwise, in order and list the same on 19.08.2024.

28.06.2024

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
vkr

To

1. The Special Judge for the cases under Prevention of Corruption Act,
Chennai.
2. The Inspector of Police,
City Special Unit-I, Vigilance and Anti – Corruption,
Chennai 16.
3. The Public Prosecutor,

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High Court of Madras.

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VIVEK KUMAR SINGH, J.

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