

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2016

CORAM:

THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.O.P. Nos.2320 and 2321 of 2016

S.Soundappan

..Petitioner/Petitioner/Accused
in both Crl.Ops.

Vs.

The Inspector of Police,
Vigilance and Anti-Corruption
Salem

..Respondent/Respondent/Complainant
in both Crl.O.Ps

Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 31.12.2015 made in Crl.M.P.Nos.824 and 825 of 2015 in Spl.C.C.No.15 of 2014 on the file of the Special Judge (Special Court for Trial of cases under Prevention of Corruption Act), Salem, by allowing this criminal original petition.

For Petitioner : Mr.V.Anandhamurthy

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

COMMON ORDER

Since in both the Crl.O.Ps, the facts are intermixed, we shall dispose of them by this common order.

2. The accused, a public servant is alleged to have demanded and accepted illegal gratification from the defacto complainant to discharge his public duty. Thus, he has been trapped in a trap case. The trial went on, prosecution evidence was over and his examination under Section 313 Cr.P.C was also over. The case is coming up for examination of defence witnesses. At this juncture, petitioner filed Crl.M.P.No.824 of 2015 to send for case diary in Cr.No.481 of 1997 registered by Salem Town Police and he also filed Crl.M.P.No.825 of 2015 to send for order dated 27.11.2001 of the Tahsildar, Salem, West.

3. The learned Special Judge under P.C. Act dismissed both the petitions by separated orders that they are not relevant and are not required for the just decision of the case.

Canvassing the correctness of the said orders, these Crl. O.Ps have been directed by the accused.

4. With reference to the order passed in Crl.M.P.No.824 of 2015 for which Crl.O.P.No.2320 of 2016 has been filed, the learned counsel for the petitioner would submit that the intention of the petitioner is to send for the case-diary in Cr.No.481 of 1997 registered by Salem Town Police for an offence under Section 468 of IPC, as in the trial the present accused has turned hostile, he has been framed in this corruption case.

5. With reference to Crl.M.P.No.825 of 2015 for which Crl.O.P.No.2321 of 2016 has been filed, the learned counsel for the petitioner would submit that the intention of the petitioner was to send for an order of Tahsildar to show that the defacto complainant has already obtained legal heir certificate, in such circumstances, there is no need for the petitioner to stretch his hands to grease it.

6. The learned counsel for the petitioner would also submit that the said documents are eminently necessary for putting up effective defence and he would also submit that Section 91 of Cr.P.C is very wide. The trial Court has enormous power, however, the power has not been properly exercised by the trial Court.

7. On the other hand, the learned Additional Public Prosecutor would submit that in the facts and circumstances of the case, those documents are not relevant and are not desirable and the criminal case has been registered by local police and the trap case has been registered by Vigilance and Anti Corruption and the relevancy stated is far fetched. He would also submit that even in the list of DWs, he has mentioned the said Tahsildar's order, in such circumstances, filing of a petition is surplus usage.

8. I have deeply considered their submissions, perused the impugned orders and the materials on record.

9. The accused should be given reasonable opportunity to defend himself effectively, an opportunity to produce documents, send for documents must have relevancy and it should be desirable. The power of the Court under Section 91 of Cr.P.C is not uncanalised. Still it must be exercised by the Courts on the contours of its relevancy, connection to the case and desirability and the Court has to see whether such a petition is a ploy to employ a method of procrastination.

10. In this case, the case in Cr.No.481 of 1997 has been registered by local police against some other persons petitioner has been cited as a witness. During the trial, he turned hostile. The present case has been registered by the Vigilance and Anti Corruption Police. In the facts and circumstances of the case, diary of the case registered by the local police is not relevant for the present corruption case. Further, it is not desirable to send for documents.

11. In the list of DWs, the said Tahsildar has been cited as a defence witness and the said document also cited, in such circumstances, it is not necessary to send for it.

12. In this view of the matter, there is no need to interfere with the impugned orders passed by the learned Special Judge.

13. In the circumstances, both the criminal original petitions are dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Special Judge Special Court
for Trial of Case under Prevention
of Corruption Act,
Salem.

2.The Additional Public Prosecutor,
High Court,
Madras.

3. The Inspector of Police,
Vigilance and Anti-Corruption Unit,
Salem.

+2cc to Mr.V.Anandha Murthy, Advocate, S.R.No.7111 & 7112
+1cc to the Government Pleader, S.R.No.7594

CrI.O.P. Nos.2320 and 2321 of 2016

kk(CO)
srg(22/02/2016)