

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

Crl.O.P.No.686 of 2016

D.Balu .. Petitioner/ Petitioner/ Accused

Vs

The State  
Rep. by Inspector of Police,  
Vigilance and Anti-Corruption,  
Salem District.  
(Crime No.16/Ac/2009) ... Respondent/ Respondent/  
Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records and to set aside the order made in C.M.P.No.654 of 2015 in Spl.C.C.No.80 of 2014 dated 17.12.2015 passed by the Special Judge, Vigilance and Anti-Corruption, Salem.

For Petitioner :Mr. A.Nagarathinam

For Respondent :Mr.P.Govindarajan  
Additional Public Prosecutor

ORDER

Aggrieved by the partial allowing of his petition under Section 91 Cr.P.C in Crl.M.P.No.654 of 2015 in Spl.C.C.No.80 of 2014, by the learned Special Judge under P.C. Act Salem, the accused has directed this Crl.O.P. under Section 482 Cr.P.C.

2. He is being prosecuted before the said Special Judge on the allegation that he had demanded illegal gratification to perform his public duty, namely, to pass certain contractors bills. Trial started PWs.1 to 5 were examined. The case is coming for further prosecution evidence.

3. At this juncture, the petitioner filed a petition under Section 91 Cr.P.C for the production of 17 items of documents. Out of them, Document Nos.1 to 11 and 17 alone were ordered to be produced. Rest of the documents, namely, item nos.12 to 16, which are bills presented by certain contractor, including the defacto complainant/PW.2 were not ordered to be produced by the trial court.

4. The learned counsel for the petitioner would contend that the Foreman is the person who passes the bill for the contractors and that is one of the defence taken up by the accused before the trial Court. To put it effectively, those documents are essential, it will enable the trial Court to render a just and correct decision. This aspect has been overlooked by the trial Court. The defence will be prejudiced if those documents are not ordered to be produced.

5. On the other hand, the learned Additional Public Prosecutor submitted that the defence is indulging in a futile exercise. Those rejected documents are not relevant to the case, they are not desirable and in no way they will be assistance to the Court to decide the case. Further, as regards the procedure relating to passing of the bills, PWs.4 and 5 have elaborately deposed. In this view of the matter, the Trial Court has rightly refused to order the production of those documents.

6. I have anxiously considered the rival submissions, perused the impugned order and the materials on record.

7. It is too early and also uncalled for to decide the weight of the defence, which is to be waived by the trial Court at the appropriate stage of the trial. But, it is a constitutional right of the accused to defend himself effectively and ably by his lawyer. The defence should not be incapacitated, deprived of any reasonable opportunity to exercise the said right and establish his plea of innocence.

8. Now, in this case, with reference to document nos.12 to 16, a specific defence, namely, in as much as they were passed by the Foreman, there is no need for the accused, who is an Assistant Manager, to make a demand for illegal gratification to pass the bills. This was opposed by the prosecution as not relevant to the case and also not necessary.

9. In the facts and circumstances of the case and in tune with the stand taken by the defence and on the principle of natural justice affording of reasonable opportunities to the defence, this Court is of the view that the accused is entitled to have those disallowed documents.

10. In view of the foregoing, this CrI.O.P. is allowed. That portion of impugned order of the learned Special Judge under P.C. Act, Salem in CrI.M.P.No.654 of 2015, in Spl.C.C.No.80 of 2014 dated 17.12.2015 refusing

to direct the respondent to produce document nos.12 to 16, is set aside. The respondent is directed to produce the said documents before the Trial Court.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

mrp

To

1. The Special Judge under P.C. Act,  
Salem.
2. The Public Prosecutor,  
High Court, Madras.
3. The Inspector of Police,  
Vigilance and Anti-Corruption,  
Salem District.

1 cc to M/s.A. Nagarathinam, Advocate Sr. 7688

1 cc to Public Prosecutor, Sr. 7093

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AD (CO)  
kk 11/2



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