

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.21480 of 2017

Marimuthu

.. Petitioner/Accused-I

Vs.

State,
Represented by
The Inspector of Police
Vigilance & Anti Corruption,
Chennai City I Detachment
Chennai - 35.

.. Respondent/complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed by the Learned Special Judge for the cases under the Prevention of Corruption Act, 1988, Chennai, dated 16.08.2017 made in Crl.M.P.No.1163 of 2017 in C.C.No.128 of 2011.

For Petitioner : Mr.S.Karthikeyan

For Respondent : Mr.C.Iyyapparaj
Government Advocate - Crl Side

ORDER

The Petitioner/accused is facing trial for the offence under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and has filed an application under Section 91 Cr.P.C., seeking the following documents :-

"1) General Diary relating to C.C.No.128/2011 from 01.07.2005 to 30.09.2005;

(2) Copy of Daily Diary and Pocket Note Book of Inspector of Police Ramasubramaniam from 01.07.2005 to 30.09.2006 and

(3) Main Gate Entry Register of Directorate of Vigilance and Anti Corruption, Chennai-28 from 02.07.2005 to 25.09.2006".

2. The prosecution has filed counter stating that this petition is made after a lapse of 11 years and due to lapse of time, records sought for are not available with the respondent. Recording the same, the Trial Court has dismissed the application saying that since, the documents sought for are not available with the respondent, there is no purpose in allowing the petition, at this juncture.

3. The documents sought by the petitioner, which are kept in the normal course of official conduct, since, the respondent prosecution has taken a stand that the documents are not available due to lapse of time and the petitioner has filed the petition after a lapse of 11 years, only with a view to drag the proceedings.

4. It is submitted by the learned counsel for the petitioner that General Diary, Daily Diary and Main Gate Entry Register are supposed to be maintained and kept for record and the plea of non availability of the same by the respondent should be viewed seriously and without proper explanation for non availability of those documents, the Trial Court ought not to have dismissed the petition.

5. The sum and substance of the contention is that, the non production of these documents will vitiate the valuable right of cross examining the concerned witness particularly the Trap Laying Officer. The fact remains that the prosecution has come out with a specific plea by way of counter that the documents sought for is not available. In such circumstances, it is not pragmatic to allow this petition. However, the right of drawing adverse inference is always available to the accused/petitioner which he can take advantage of it.

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6. The Trial Court while disposing of the case shall take note of the fact that the documents sought under Section 91 Cr.P.C., by the petitioner have not been produced by the respondent on the ground that it is not available. The non-production of those documents is going to defeat the defence of the accused/petitioner and the same may be taken judicial note by the Trial Court. With this observation, the criminal original petition stands dismissed.

Sd/-
Deputy Registrar (CS V)

//True Copy//

Sub Assistant Registrar

raja/jer
To

1. The Inspector of Police
Vigilance & Anti Corruption,
Chennai City I Detachment
Chennai - 35.
2. The Public Prosecutor
High Court, Chennai.

+1 cc to Mr.S.Karthikeyan Advocate sr 72411

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