

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.11.2017

Coram:

The Hon'ble Dr. Justice G. Jayachandran

Crl.O.P.No. 22169 of 2017

Mr. S. Dayalan,
Executive Engineer,
Public Works Department,
ESI Engineering Cell,
Triplicane, Chennai - 5.Petitioner/Accused

Versus

State of Tamil Nadu
Represented by
The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Chennai City - I Detachment,
Chennai - 28.Respondent/Complainant

This Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to set aside the order passed by the Learned Special Judge for the cases under the Prevention of Corruption Act, 1988, Chennai, dated 27.09.2017 made in Crl.M.P.No.1743 of 2017 in C.C.No.129 of 2011 and allow this Criminal Original Petition.

For Petitioner : Mr. S. Karthikeyan

For Respondent : Mr. A. Govindaraj,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition is filed, seeking to set aside the order passed by the learned Special Judge, Special Court for the cases under the Prevention of Corruption Act, Chennai/Trial Court, in Crl.M.P.1743 of 2017 dated 27.09.2017.

2. Heard Mr. S. Karthikeyan, the learned counsel appearing for the petitioner and Mr. A. Govindaraj, the learned Additional Public Prosecutor appearing on behalf of the respondent/State.

3. The petitioner has filed a Criminal Miscellaneous Petition, viz. CrI.M.P.No.1743 of 2017, in C.C.No.129 of 2011, under Section 91 of Cr.P.C. seeking for production of certain documents, viz., Entry Register of the Directorate of Vigilance and Anti-Corruption, Chennai, for the period between 15.02.2005 to 10.03.2005. The respondent/prosecution has filed a counter affidavit in the said Miscellaneous Petition, stating that, the documents, as sought for by the petitioner is not available with the respondent, and that, they stopped maintaining the main Entry Register for the entire complex of the Directorate of Vigilance and Anti-Corruption, Chennai. Further, it is stated that, no Entry Register maintained for the entire complex of the Directorate of Vigilance and Anti-Corruption. The trial Court dismissed the Petition, by holding that no purpose would be served by allowing this Petition, as the respondent has already filed a reply stating that the said document is not available with them. Impugning the said order, this Criminal Original Petition is filed.

4. The learned counsel appearing for the petitioner submitted that the averments set out in the counter affidavit of the respondent that no entry register is maintained for the entire complex of the Directorate of Vigilance and Anti-Corruption, Chennai-28 is utterly false, and to substantiate his contention, he produced the printed copy of Entry Register, maintained by the respondent for the year 2006.

5. The learned Additional Public Prosecutor for the respondent/State while reiterating the averments set out in the counter affidavit filed in relation to CrI.M.P.No.1743 of 2017, submitted that, no Entry Register is maintained for the entire complex of the Directorate of Vigilance and Anti-Corruption, and hence, the question of providing the same does not arise. It is further submitted that, only recently, due to intrusion of anti-social elements, the Entry Register for the entire complex of the Directorate of Vigilance and Anti-Corruption is maintained.

6. When respondent says that particular document is available, the existence of that document has to be presumed, if they says that it is not maintained, existence of such documents cannot be presumed. In this case, as contended by the learned Additional Public Prosecutor, existence of Entry Register cannot be presumed, as the respondent/Prosecution have stated they are not maintaining the Entry Register.

7. Having submitted that the Entry Register is not available with them, it is open to the petitioner to canvass on this aspect before the Trial Court, for appreciation of its veracity.

8. Accordingly, this Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

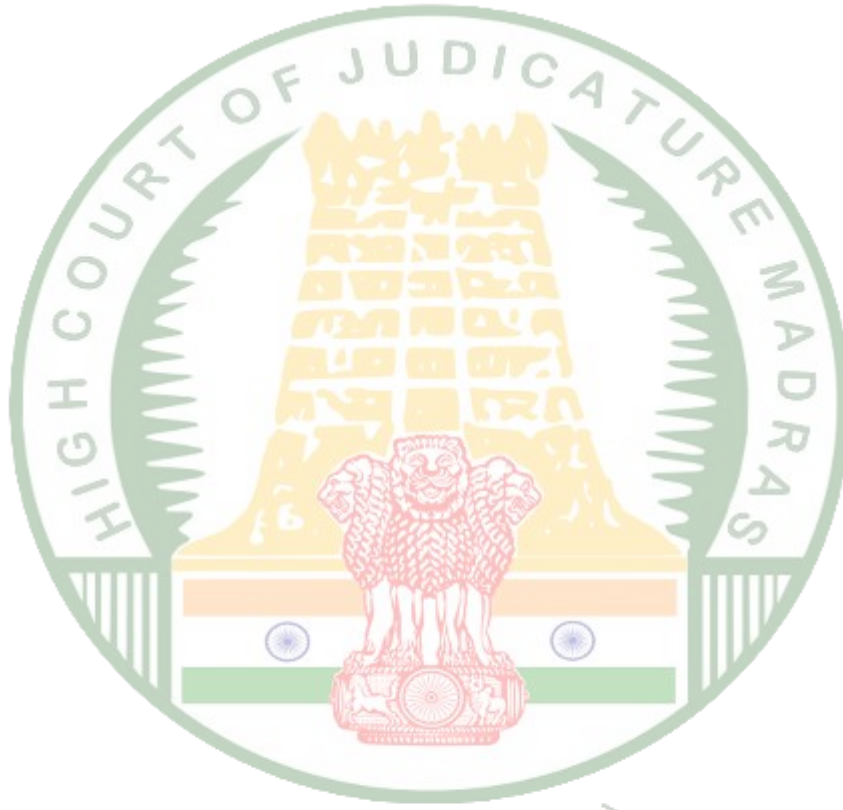
1. The Special Judge,
Special Court for the Cases under P.C. Act,
Chennai.
2. The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Chennai City - I Detachment,
Chennai -28.
3. The Public Prosecutor,
High Court,
Madras.

Cr1.O.P.No. 22169 of 2017

RRK(11/12/2017)



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