

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 15.07.2017

Orders Pronounced on: 22.11.2017

Coram:

The Hon'ble Dr.Justice G.JAYACHANDRAN

Crl.O.P.No.23882 of 2017

and

Crl.M.P.No.13825 of 2017

A.Chinnasamy

Petitioner/Accused

Versus

State rep., by
Deputy Superintendent of Police
Vigilance and Ani-Corruption,
Dharmapuri, Salem.

Respondent/Complainant

Criminal Original Petition filed Under Section 407 (1) of Cr.P.C., seeking top withdraw the case in Spl.C.C.No.2 of 2015 from the file of the learned Special Judge for the Trial of cases under Prevention of Corruption Act, at Salem, transfer the said case to any other competent Special Criminal Court of any other District.

For Petitioner.. Mr.C.S.Dhanasekaran

For Respondent.. Mr.P.Govindarajan, APP (Crl.Side)

O R D E R

Mr. Chinnasamy, accused in Spl.C.C 2 of 15 on the file of Special Judge for the trial of cases under Prevention of Corruption Act at Salem, seeks transfer of the case to some other court on the ground that the presiding officer has prejudged the case.

2.To substantiate this plea he has alleged that, On 16.02.2017 when his discharge petition was taken up for hearing the judge observed that he is competent to sentence him for 7 years imprisonment and to his mind he is already guilty of the crime. On 15.09.2017 he observed that, the petitioner in his arogancy of power had imposed penalty of Rs 2.5 crores on Karnan and Rs 2.25 crores on Vellaiyan besides sent report to the

Government against the staff of judiciary to take action, so he will not leave him without convicting him for 7 years. On 20.10.2017 he observed, that the person against whom the petitioner recommended for Rs.2.25 crores penalty have foisted case against him. Because he has antagonised them he is standing before the court as accused. Surely, the petitioner will be imprisoned for 7 years.

3. The petitioner contents that by the above utterance, the Presiding Officer has entered the arena of controversy in which he has arrayed himself as party against him. The words used by a Judicial officer, though susceptible of explanation and traceable to a strong sense of duty, may at time be calculated to create in his mind an apprehension that he may not have an impartial trial. Hence the case has to be transferred to some other competent court.

4. In support of this petition, the learned counsel relied the judgment of the Karnataka High Court, reported in 1975 CrL.L.J. 744, in the case of Adam Basha -vs- State of Karnataka, wherein the observations made by the Presiding Officer tend to create an apprehension in the mind of the accused person that he may not have a fair decision at the hands of the Presiding Officer, it would be expedient in the interest of justice to order transfer. It is utmost importance that litigants should have faith and confidence in the impartiality of the courts.

5. The learned Additional Public Prosecutor submitted that, the present petition casting aspersion on the Presiding Officer is filed with ulterior motive to protract the proceedings. The averments found in the petition are false and frivolous. The petitioner is facing trial for the alleged offence under section 7 and 13(1)(d) r/w 13 (2) of the Prevention of Corruption act for demanding bribe of Rs 10,000/- from each brick klin owners of Vazhappdi Taluk at Salem District to mine red sand from patta land and on 30.10.2010, as advance received Rs.10,000/- (twenty numbers of each five hundred rupees notes) smeared with phenolphthalien through his driver Dharmaraja from Vellaiyan, the defacto complainant. As per the direction of the petitioner, Dharmaraja went to the AXIS bank and exchanged the 20 five hundred rupees into 10 thousand rupees notes. The hand fingers of Dharmaraja was washed in sodium carbonate solution, which on dipping turned pink indicating presence of phenolphthalien. Later on confession of Dharmaraja, the tainted money was recovered from the AXIS bank cash counter. Both the petitioner and his driver Dharmaraja were arrested on the same day. Though the case is of the year 2010, the

petitioner didnot allow the investigation to proceed.

6.Immediately after caught in the trap proceedings, he filed petition Crl.O.P. No. 22428/2011 to quash the proceedings alleging that he took charge as Thasildar, Vazhapadi on 07.06.2010 and thereafter started taking stringent action against persons who are indulging in illegal quarry of sand and imposed fine on the offenders. Persons who were affected by his action had conspired and arranged for trap as if he demanded bribe and received it through his driver Dharmaraja. On 19.03.2015 this petition was dismissed. Immediately, he filed another petition Crl.O.P No. 7155/2015 before this court seeking transfer of investigation from DV & AC to CBI attributing motive against the investigating officers. After one year he withdrew this petition and same was dismissed as withdrawn on 09.09.2016.

7.When the trial court fixed the date for framing charges he failed to attend the court thereby prevented the court from proceeding further. Taking note of his deliberate absence, the trial court dismissed his petition filed under section 317 of the code and issued non-bailable warrant on 07.11.2016. Challenging that order the petitioner moved Crl.R.C.No. 1353/2016 and same was allowed by this court on 18.11.2016. Thereafter, the petitioner appeared before the trial court. He was served with the copies of document relied by the prosecution in compliance with Section 207 Cr.P.C. After receiving the copies of document, discharge petition under Section 239 of the code was filed by the petitioner, pending disposal of the discharge petition he has also filed a petition to examine him as witness in the discharge petition. The prosecution has filed its counter and the matter is pending. After filing these two petitions, instead of getting along with the enquiry, had filed this transfer petition with baseless allegation, invented for the purpose of creating a ground to file this transfer petition.

8.Apart from oral submission, the counter affidavit filed narrating how the petitioner is going on creating false records as if, second accused Dharmaraja was planted into his office by his adversaries and after his dismissal Dharmaraja is employed in one of the company against whom he took action. As Thasildar he initiated action to recover several crores of rupees from erring persons, therefore he is victimised by the persons suffered his action. Type-sets of paper containing documents filed to show none of his claims are true and the correspondence relied by the petitioner in support of his claims are all fabricated by him in order to escape from the clutches of law.

9.The petitioner in response to the counter affidavit has filed a reply affidavit meeting out the averments made in the counter affidavit and during the oral submission, the learned counsel appearing for the petitioner, took a feeble plea that the counter affidavit filed by the respondent is not in accordance with the prescribed format. The deponent has not disclosed his name, age, address in the counter- affidavit hence it should not be looked into and has to be eschewed.

10.This court is forced to remind, Procedure is hand maid of justice. Not the form but content is the essence for deciding the point for consideration. Therefore to ascertain the averments made by the respective parties, this court through registry collected the orders passed by this court in the earlier petitions filed by the petitioner herein and referred above.

11.In CrI.O.P.No. 22428/2011 the petitioner has alleged that his co-accused Dharmaraja was planted in his office by M/s SDM Project Pvt. Limited and VNC Private limited to fix him in the trap case. Therefore sought for quashing the complaint. Whereas, the prosecution has produced records which reveals that Dharmaraja was appointed by the petitioner after conducting interview. The appointment order dated 25.11.2010 of Dharmaraja has been issued by the petitioner. Thus his attempt to get the complaint quashed failed and petition was dismissed on 19.03.2015. In the affidavit filed in support of the present petition, the petitioner has averred that the co-accused was appointed on the recommendation of local MLA by name R.Rajendiran. Having issued appointment order, if the signatory says that he appointed him on the recommendation of third person, this admission is suffice to prosecute him for abusing his power for external consideration.

12.The alleged action taken by the petitioner against the erring company appears to be dubious and exaggerated. Besides, most of the documents are subsequent to the trap incident. The matter under trial is whether the petitioner demanded and obtained bribe from the defacto complainant a brick klin owner to mine red sand in the patta land for manufacturing bricks to be supplied for the Government project. This court on earlier occasion having found that the defence theory of malice in law is only a illusionary however given liberty to the petitioner to agitate before the trial court, the petitioner is again harping on these allegations and trying to divert the issue by relying upon certain documents, which are not genuine

according to prosecution. This court could see it as attempt by the petitioner to misdirect the court.

13. Be it as it may, in view of the pendency of CrI.O.P.No.22428/2011, the investigation was delayed by nearly 4 years till its disposal on 19.03.2015. But then, the petitioner has immediately filed CrI.O.P.No.7155/2015 seeking transfer of investigation from DV & AC to CBI. The petitioner has withdrawn this petition on 09.09.2016 by that time, the case has been delayed for another one year. At last after filing the final report, the petitioner has filed a discharge petition before the trial court and a petition seeking leave to examine him as a witness in the discharge petition to mark documents. After the matter is heard and reserved for orders on 20.10.2017, the present petition for transfer is filed alleging the presiding officer has uttered certain words during the month of February 2017 and subsequently, which creates apprehension in his mind that he will not get justice.

14. It is evident from the records that after failed in his attempt to stall the criminal proceedings against him by making allegation against the defacto complainant and the investigation agency, now he has turned his gun against the Presiding Officer. Discreet enquiry made through registry reveals that there is no such utterance by the Presiding Officer and it was the petitioner who was frequently interfering the court proceedings making unwarrant comments.

15. The learned counsel for the petitioner insisted this court, that explanation should be called for from the Presiding Officer about the allegations made against him. This court is constrained to record the unhealthy trend of making wild allegations against the judges by some of the vested interest and put them judicial officers in embarrassing position to prove otherwise, the non existence of facts alleged. Even the judges of Apex Court are not spared from this dubious game. If this trend is not arrested, judges cannot function fair and free. Calling for explanation from the judicial officer in response to transfer petitions is not required in all cases, unless the court is convinced that there is element of truth in the allegations. Without any element of truth, if the judicial officers are called to explain a non existing fact, it will result in demoralising the judicial officer who is expected to discharge his duty without fear or favour.

16. Therefore for the aforesaid reasons, the petition is dismissed with costs of Rs 1000/-. The petitioner is directed to pay the cost to the District Legal Services Authority, Salem directly and produce the receipt to the trial court within 30 days.

17.The trial court is again reminded of the direction issued by this court while allowing the eariler petition filed by this petitioner to recall the warrant issued for his non appearance, that he must co-operate for speedy trial without fail. If the accused/petitioner henceforth fails to adhere to this direction, the trial court is at liberty to take measures to ensure his co-operation.

18.Accordingly the petition dismissed with costs. Consequently, Cr1.M.P.No.13825 of 2017 is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gr.

Copy to:

- 1.The Special Judge for the Trial of cases
under Prevention of Corruption Act, at Salem,
- 2.Deputy Superintendent of Police, Vigilance
and Ani-Corruption, Dharmapuri, Salem.

Copy to
The Secretary
District Legal Services Authority

+1 Cc to Mr.C.S. Dhanasekaran, Advocate sr 82993.

Cr1.O.P.No.23882 of 2017

SP(05/12/2017)

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