

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :05.02.2018

Pronounced on :07.02.2018

Coram:

The Hon'ble Dr.Justice G.Jayachandran

Crl.O.P.No.3164 of 2018 and
Crl.M.P.No.1353 of 2018

Mr.R.Chinnakannu .. Petitioner

/versus/

The State Rep.by:

The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
City-I, Dett., R.A.Puram,

Chennai 600 028. .. Respondent

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code praying to call for the records and set aside the order passed by learned Special Court for Prevention of Corruption Act, at Chennai in Crl.M.P.No.2639 of 2017, dated 28.12.2017 in C.C.No.80 of 2011 pending trial before the learned Special Court for Prevention of Corruption Act at Chennai and also direct the learned Special Court for Prevention of Corruption Act, at Chennai to call for the records relating to General Diary, Movement Register dated 08.06.2009 and 09.06.2009 respectively and public entry register dated 18.08.2009 and 28.08.2009 respectively, which is maintainable by the respondent police at Chennai.

For Petitioner :Mr.P.Kumaresan

For Respondent :Mr.P.Govindarajan, APP

O R D E R

This petition is filed to call for the records and set aside the order passed by learned Special Court for Prevention of Corruption Act, at Chennai in Crl.M.P.No.2639 of 2017, dated 28.12.2017 in C.C.No.80 of 2011 and also direct the learned Special Court for Prevention of Corruption Act, at Chennai to call for the records relating to General Diary, Movement Register dated 08.06.2009 and 09.06.2009 respectively and Public Entry Register dated 18.08.2009 and 28.08.2009 respectively, which is maintainable by the respondent police at Chennai.

2. The case of the petitioner is that the petitioner was while working as Motor Vehicle Inspector Grade-I in the office of Regional Transport Office, Chennai on 02.06.2009, he demanded and accepted Rs.1,200/- as illegal gratification from one P.Kumar for allowing him to go free without booking him for violating the Motor Vehicles Act. In the course of the trial, the accused/petitioner has sought for General Diary, Movement Register dated 08.06.2009 and 09.06.2009 respectively and Public Entry Register dated 18.08.2009 and 28.08.2009 maintained by the respondent police. The same was opposed by the State by filing counter. The Trial Court has dismissed the petition on the ground that the reason given by the State for non-production of the documents sought by him are acceptable since those documents are not maintained by them and not available with them at the distance point of time and that no purpose will be served by allowing the application, if at all adverse inference can be drawn against the respondent.

3. The learned Additional Public Prosecutor would state that the documents sought for pertain to the year 2009. After lapse of 8 years, this application has been filed for production of documents. In the counter, it has been specifically stated that the documents sought for by the accused person were not handed over to the Investigating Officer, when he took charge and he is unable to ascertain the reason whether those documents were destroyed or damaged due to calamity.

4. The learned counsel appearing for the petitioner would submit that the documents sought for are very vital for the defence. A vague answer is given by the State that they were unable to ascertain the reason whether it was destroyed or damaged due to natural calamity or non-availability of any records. Hence, the petition is filed under Section 91 of Cr.P.C.

5. The documents sought are very vital to prove the case of the defence and without those documents, even the Investigating Officer cannot proceed with the deposition. For the said purpose, it is pertinent to read Section 91 of Criminal Procedure Code, which provides power to the State or any officer who in-charge of the Police Station seeking production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings. The offences alleged to have taken place on 02.06.2009 has been taken on file for trial in C.C.No.80 of 2011. The present petition seeking production of documents is filed very recently, after several years on serving copies to the accused.

6. That apart, Public Entry Register and Movement Register, which are likely to be maintained by most of the offices cannot

be expected to be retained for years together, unless it is required for any specific purpose. These two registers are maintained on day to day basis just to regulate the administration and one cannot expect for production of these documents after lapse of 8 years. In the counter, it is specifically stated that these papers were not handed over to the subsequent Investigating Officer, who took up the investigation and he is not certain where it is available. Since he has given some explanation for non-availability of certain documents, it cannot be construed as adversity answers.

7. Regarding the General Diary sought to be produced, it is not a document to be shared with the accused person. If the Court requires, it can call for the General Diary for its perusal. When custodian of the document make out the case for non availability of the document on the ground of efflux of time, destruction or missing, the Court has to consider the veracity of it and decide whether presumption has to be adversely taken against non production of documents or not.

8. As rightly pointed out by the trial Court, it is for the Court, after trial to consider the evidence let in by the prosecution including non-production of documents sought which would likely to help the defence. By now, the law is well settled and the pronouncement of judgments time and again has indicated that seeking document under Section 91 of Criminal Procedure Code should be within reasonable time and if such request made beyond reasonable time, even adverse inference could not be taken for non-production of documents. In this case, the trial Court has rightly observed that at the time of trial, if necessary the non-production of documents will be taken note of.

9. Therefore, there is no reason to entertain this petition. The relevancy of the document sought for by the petitioner vis-a-vis non-production of the same shall be weighed by the trial Court during the trial. Hence, this criminal original petition is dismissed. Consequently, Connected Crl.M.P.No.1353 of 2018 is also dismissed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Special Court for Prevention of Corruption Act, Chennai.

2. The Deputy Superintendent of Police,Vigilance and Anti Corruption, City-I, Dett., R.A.Puram,Chennai 600 028.

3.The Public Prosecutor, High Court, Madras.

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RRK (20/02/2018)



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