

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.26027 of 2017

V.Pitchai

... Petitioner

Vs.

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

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed by the learned Special Judge for the cases under the Prevention of Corruption Act, 1988, Chennai, dated 23.05.2017 made in Crl.M.P.No.670/2017 in C.C.No.102 of 2011, with regard to Crime Nos.12/AC/2001, 14/AC/2001 & 15/AC/2001 in item No.1 mentioned in the Crl.M.P.No.670 of 2017 petition.

For Petitioner : Mr.S.Karthikeyan

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

सत्यमेव जयते
O R D E R

This petition is directed against the order passed by the trial Court dismissing the application filed under Section 91 Cr.P.C., The petitioner herein stands prosecuted for alleged offence under Section 7 and 13(2) r/w. 13(1)(e) of the Prevention of Corruption Act. The case is of the year 2010 wherein during the course of the trial, the accused/petitioner had through his petition Crl.M.P.No.670 of 2017 had sought for production of

1. The entire case diary and statement of witness, recorded pertaining to the Crime Nos.12/AC/2001, 13/AC/2001, 14/AC/2001, 15/AC/2001.

2. Preliminary investigation records such as statement of witness recorded if any in the present Crime No.18/2005/AC/CC-II.

2. The state represented by the Inspector of Police, Vigilance & Anti Corruption, Chennai has filed counter before the trial Court wherein it is stated that the case was investigated and final report submitted before the Court on 15.04.2010. The accused/petitioner was furnished with copies of the documents relied by prosecution as early as 27.07.2010. Now after lapse of 7 years, the present application is filed to produce certain documents which are neither relevant nor essential for the case in hand, were the petitioner/accused is alleged to have accumulated wealth disproportionate to his known source of income. Whereas the other cases which are referred by the petitioner relates to irregularities committed by the petitioner while exercising his power as Commissioner of Municipal Corporation. The case diary and the statement of witnesses recorded in those cases are privilege documents and intercommunication between the investigating officers.

3. The trial Court after duly considering the averments made in the petition and in the counter has declined to accept the plea that case diary is privileged document and production of the case diary for the perusal of the accused person is prohibited under Section 172 Cr.P.C. However for the point whether it is relevant for the purpose of present trial, it has held that the documents collected during the search in the residential premises of the accused person in Crime No.13/AC/2001 are alone relevant document for the case, whereas the case diary relating to other investigations viz., 12/AC/2001, 13/AC/2001, 14/AC/2001, 15/AC/2001 are not relevant and dismissed as not relevant for the purpose of trial of this case.

4. Aggrieved by the said order the present petition is filed on the ground that under Section 91 of the code the necessity and desirability would have to be seen by the Court in the context for the purpose of which the documents are sought for. The trial Court has erroneously come to the decision that documents are not relevant for the dispute. The petitioner has clearly mentioned in his petition that the documents sought for in relevant for the examination of the witnesses. While the Hon'ble High Court in Raj Kumar Vs. State has held that reasonable opportunity has to be given in the cases of serious allegation. Merely based on delay, the basic right to defend cannot be denied. For the said reasons, the petitioner herein, seeks to set aside the order passed by the trial Court made in Crl.M.P.No.670 of 2017 with regard to production of documents collected in Crime No.12/AC/2001, 14/AC/2001 and 15/AC/2001.

5. The learned counsel appearing for the petitioner submitted that the petitioner herein, is charged by the Vigilance and Anti corruption for the alleged irregularities and 4 cases were registered against him in Crime Nos. 12/AC/2001, 13/AC/2001, 14/AC/2001, 15/AC/2001 and thereafter for disproportionate assets, the 4th case under Crime No.18/2005/AC/CC-II come to be registered. Therefore, the case diary and statement of witnesses recorded during the investigation of these cases are very much essential for him to defend the present case. Since, the trial Court has deprived the opportunity to make use of the earlier statement recorded by the investigation agency in the other cases cause handicap to him. Whereas, the learned Additional Public Prosecutor submitted that the case diary in the earlier case cannot be parted away to the accused person and it is no way relevant to the present case in Crime No.18/2005/AC/CC/II. Further more, the document collected during the search of the accused residence are known to the accused person since the list of documents have already been furnish to him and also the trial Court has allowed the petition in respect of the documents and the statement of witness recorded in Crime No.13/AC/2001. Therefore, there cannot be any grievance of the petitioner against the impugned order.

6. It is seen from the record that the present case against the petitioner is that he during the Check Period 01.01.1997 to 31.12.2001 had amassed wealth in his name and name of others worth around Rs.52,00,000/- which is disproportionate to the known source of income. The case registered in the year 2010, the trial has commenced after much delay and so far 16 witnesses have been examined.

7. In case of disproportionate assets, it is for the prosecution to prove how the accused person is holding asset in his name and others name beyond legally known source of income and whatever document relied on by the prosecution are furnished to the accused. It is always open to the accused person to let in evidence when their turn come. Filing petition under Section 91 with vague reference to make rowing enquiry is not permissible under law. Further more, when there is no specific detail is brought to the notice of the Court in respect of the document and statement recorded by the investigation agency, a blanket direction for production of documents cannot be issued. Making a vague plea seeking entire case diary and the statement of witnesses or preliminary investigation records without any detail and without explaining the relevancy cannot be entertained.

8. Recently the Hon'ble Supreme Court while considering the scope of Section 91 Cr.P.C, in Nithya

Dharmananda and others Vs Gopal MANU/SC/1553/17 has held that,

9. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of charge but if the Court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It does not mean that the defence has a right to invoke Section 91 Code of Criminal Procedure de hors the satisfaction of the Court, at the stage of charge.

9. When there is no material to infer there was preliminary investigation in Crime No.18/2005/AC/CC-II and when there is no specific averments in the petition with the names of the witnesses whose statements were recorded during the said preliminary investigation, the petition under Section 91 of Cr.P.C is unsustainable. The trial Court has rightly dismissed the petition, which is in consonance with the Supreme Court dictum. Hence, this Court confirms the impugned order of the trial Court.

In the result, the criminal original petition stands dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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

CrI.O.P.No.26027 of 2017

CS/23/01/18