



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.01.2018

CORAM:

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. (MD) No.4574 of 2017

and

Crl.M.P. (MD) No.4614 of 2017

V.Ramasubbu

... Petitioner

-Vs.-

The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Thoothukudi District.
(Crime No.03 of 2006)

... Respondent

Prayer: Criminal Original Petition - filed under Section 482 of the Code of Criminal Procedure, to issue a direction to the learned Special Court for Prevention of Corruption cum Chief Judicial Magistrate, Tuticorin, to send for documents viz. 1) 293 pages of documents dated 03.11.2011 in 1C/2008/AO pertaining to Mr.V.S.-Ramsubbu at the office of the Executive Engineer Tuticorin (Construction and Maintenance) 2) Request letter for sanction presented by Department and Prevention of Corruption Act 3) Rejection letter for sanction issued by Superintendent Engineer M.Jeyaraman 4) Letter for re-issuance of Sanction issued by the Department of Prevention of Corruption Act 5) Sanction Letter issued by Chief Engineer and reminder letter 6) Letter by M.Jebius Joyston Gomez addressed to Executive Engineer to the effect that seized money is meant for registration purpose 7) File pertaining to solvency certificate dated 14.08.2006 issued to M.Jebius Joyston Gomez for two Lakhs solvency by Taluk Office, Tuticorin file No.K.Dis/B1/8276/06 8) Letter Addressed by Tahsildar, Tuticorin dated 01.09.2006 addressed to the Executive Engineer P.W.D, Tuticorin 9) Solvency Certificate Registration Certificate in Serial No.164 within time stipulated by this Court.

For Petitioner : Mr.Pandi Durai
For Mr.T.Lajapathi Roy

For Respondent : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

ORDER

<https://hcservices.ecourts.gov.in/hcservices/> The petitioner/accused is facing prosecution in Spl.C.C.No.1 of 2009 before the learned Chief Judicial Magistrate,



Thoothukudi for the offences under Sections 7 and 13(2) of the Prevention of Corruption Act r/w Section 13(1)(d) of the Prevention of Corruption Act.

2. It is the case of the prosecution that the petitioner was working as Drafting Officer in the Public Works Department and he had demanded a bribe at Rs.20,000/- from the defacto-complainant for providing him a solvency certificate, so that, he could become a registered PWD contractor. On the complaint lodged by the defacto-complainant, the Vigilance and Anti Corruption Department registered a case and laid a trap on 04.09.2006, in which, the accused fell. After completing the investigation, the police have filed a charge sheet in Spl.C.C.No.1 of 2009 as stated above and 20 witnesses have been examined. The accused filed Cr.M.P.No.1623 of 2014 in Spl.C.C.No.1 of 2009 under Section 91 Cr.P.C. Calling for the production of certain documents. The trial Court dismissed the petition on 30.01.2015 on the ground that the High Court had directed the trial Court to complete the trial within a timeframe. Challenging the order passed by the trial Court, the accused filed Crl.O.P.5305 of 2015, in which, this Court passed final orders on 26.06.2015 setting aside the order passed by the trial Court and directing the trial Court to send for the documents as required by the accused. Accordingly, the police collected those documents and submitted the same to the trial Court. Since the accused was not satisfied with the documents produced in the Court, he has filed the present direction petition.

3. Heard Mr.Pandi Durai, learned counsel for the petitioner, Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor appearing for the respondent and G.Hector Dharma Raj, Deputy Superintendent of Police, Vigilance and Anti Corruption, Thoothukudi.

4. It appears that this Court, by order dated 13.07.2017 in Crl.O.P.(MD)No.4574 of 2017 had called for remarks from the trial Court. The learned Chief Judicial Magistrate / Special Judge, Thoothukudi (trial Court) has sent a detailed report dated 19.07.2017, which this Court hereby accepts.

5. The long and short of the case is that the prosecution have substantially complied with the directions of this Court and have produced most of the documents. However, it is the contention of the accused that out of ten documents sought for by the accused in the Cr.M.P.1623 of 2014, document Nos.3,4,5,7,8 and 9 have not been produced.

6. The learned Additional Public Prosecutor submitted that the documents Nos.3,4 and 5, namely, "3.Requisition of VATC Chennai, according sanction for prosecution", "4.Refusal of S.C., P.W.D. Thoothukudi for according sanction sent to the VATC



authorities by Thiru Jayaraman, Engineer S.C. Who is appointing authority." and "5.Subsequent request for sanction by VATC authorities" respectively, the originals are not available in the department as they have been destroyed under the Destruction of the Record Rules, but, however, the photocopies of the same are available. Hence, in view of the above, permission is granted to the prosecution to file photocopies of the documents Nos.3,4 and 5 and the trial Court is directed to accept the photocopies as secondary evidence, since the primary evidence has been lost.

7. As regards, document No.7, namely, "Tr.Joystan Gomez letter dated 21.11.2006 sent to the Executive Engineer, Thoothukudi stating that the amount recovered from the P.W.D. Office only ment for Registration", the learned Additional Public Prosecutor submitted that the same has been marked as Ex.D.2. Therefore, the prosecution need not produce document No.7.

8. As regards document No.8, namely, "The solvency certificate of Tr.Joystan Gomez, Thoothukudi for Rs.2 Lakhs issued by the Tahsildar, Thoothukudi dated 14.08.2006 which is now available in Taluk Office, Thoothukudi and the file number is K.Dis/B1/8276/06", the learned Additional Public Prosecutor submitted that these taluk Office records were destroyed under the Destruction of Record Rules and therefore, neither photocopy nor original is available. The fact remains that this document relates to the year 2006 and the petitioner has filed Cr.M.P.No.1623 of 2014 only on 07.11.2014. Therefore, the Government cannot be expected to indefinitely maintain the records. Therefore, the prosecution cannot be directed to produce document No.8.

9. As regards document No.10, namely, "The solvency register showing the movement for issue of solvency certificate Serial No.164, which is now available with Taluk Office, Thoothukudi ", it is seen that this is also a document of the year 2006 and therefore, it will not be available in the taluk office. However, a part of it has been marked as Ex.P.42 and therefore, the prosecution need not produce document No.10. Therefore, the defence has to remain content with Ex.P.42 in whatever form it is in.

10. In view of the above, this petition is ordered accordingly. Consequently, the conneted Miscellaneous Petition is closed.

11. The trial Court is directed to proceed with the trial and complete expeditiously for which, If the accused adopts any dilatory tactics, he can be remanded to custody under Section 309 Cr.P.C., in the light of the law laid down by the Supreme Court in **State of U.P. v. Shambu Nath Singh [2001(4)SCC 667]**. The accused **Singh** is directed to examine the witness on the day when they are examined in chief, as directed by the Supreme Court in the case of **Vinod**



Kumar vs. State of Punjab reported in **2015 (1) Scale 542**. If any accused absconds, a fresh FIR can be registered under Section 229-A IPC and they can be remanded to custody.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

To

1. The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Thoothukudi District.
2. The learned Special Court for Prevention of Corruption cum
Chief Judicial Magistrate,
Thoothukudi.
3. The Additional Public Prosecutor,
Madurai Bench of Madras HighCourt,
Madurai.

+1cc to Mr.T.Lajapathi Roy, Advocate Sr.No.42607

SM

VB/KKR/SAR2/13.02.2018/4P/5C

Crl.O.P.(MD)No.4574 of 2017
17.01.2018