



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 31.07.2018
PRONOUNCED ON : 29.08.2018

CORAM:

THE HONOURABLE Mrs. JUSTICE R. THARANI

Crl.O.P. (MD) No.9649 of 2018

WEB COPY

Dr.A.S.Ramesh,
S/o. Subramanian,
Previously Senior Assistant Surgeon,
Government Hospital,
Srivilliputhur, Virudhunagar,
Presently residing at
No.50, Sivakamipuram Street,
Rajapalayam Taluk,
Virudhunagar District.

... Petitioner/Sole Accused

Vs.

The State through,
The Inspector of Police,
Vigilance and Anti Corruption Unit,
Virudhunagar.
(Crime No.3 of 2005)

... Respondent /Complainant

PRAYER : The petition filed under Section 482 Cr.P.C. to set aside the impugned order dated 29.05.2018 made in Cr.M.P.NO.2272 of 2017 in Special C.C.No.3 of 2014 on the file of the Chief Judicial Magistrate/Special Judge, (Prevention of Corruption Act Cases), Srivilliputhur.

For Petitioner
For Respondent

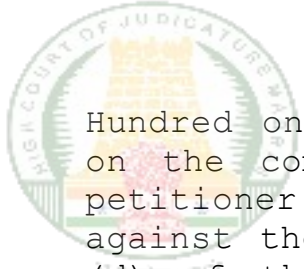
: Mr.G.Mariappan
: Mr.M.Chandrasekarn,
Additional Public Prosecutor.

ORDER

Heard Mr.G.Mariappan, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondent.

2.This Original Petition has been filed to set aside the impugned order dated 29.05.2018 made in Cr.M.P.NO.2272 of 2017 in Special C.C.No.3 of 2014 on the file of the Chief Judicial Magistrate/Special Judge, (Prevention of Corruption Act Cases), Srivilliputhur.

3.The petitioner worked as a Senior Assistant Surgeon at the Government Hospital, Srivilliputhur from 03.08.2001 to 01.03.2005. It is alleged that on 14.02.2005, the petitioner attended a patient called Nallammal during his duty hours and suggested her husband to take scanning of the head at the Headquarters Government Hospital at Virudhunagar and for giving requisition letter, he demanded a bribe of Rs.300/- (Rupees Three



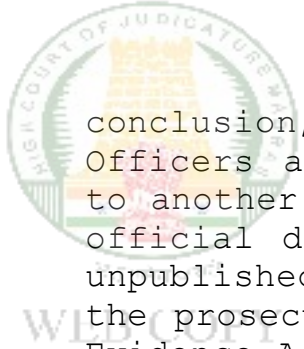
Hundred only) as illegal gratification. It is alleged that based on the complaint of the complainant, a trap was laid and the petitioner was caught red handed and the chargesheet was laid against the petitioner under Sections 7, 13(2) r/w. Section 13(1) (d) of the Prevention of Corruption Act, 1988. The petitioner filed a petition under Section 91 of Cr.P.C., prayed for directing the respondent to produce the documents G.O.Ms.No.374 dated 08.10.2007 and R.C.No.39/2005/MET/VN/dated 22.03.2005 filed by the Director of Vigilance and Anti Corruption and the petition was dismissed by the trial Court.

4.On the side of the petitioner, it is stated that P.W.1 is the Sanctioning Authority and the Sanction Order was marked as Ex.P1 and for removal of the accused from the service, certain procedures are to be followed the Sanctioning Authority has to peruse the case records and after being fully satisfied only he can pass the sanction order. But the Sanctioning Authority without verifying records simply passed the sanctioning order based on the draft sanction order filed by the Investigation Agency. To prove that the Sanctioning Authority has not applied his mind and perused the files regarding the offence. The entire documents perused by him are necessary for the case.

5.On the side of the respondent, it is stated that the documents relating to the case are available in the Court and the other documents perused by the authorities in R.C.No.39/2005/MET/VN/dated 22.03.2005 are the confidential official communications relating to the affairs of State as per Sections 123 and 124 of Indian Evidence Act and the petitioner cannot claim for production of the said documents.

6.On the side of the petitioner, it is stated that these documents are not confidential documents. The Sanction Order was passed mechanically. The draft sanction order filed by the respondent is necessary to prove that the sanction was given mechanically and the petitioner is having the right to call for the records only when he entered upon the defence stage. In support the Judgments passed by the Hon'ble Supreme Court of India reported in "2005(1) CTC 134", "2017(6) CTC 888" and the Judgment passed by this Court in "CrI.O.P.(MD)No.12955 of 2010" are cited.

7.On the side of the respondent, it is stated that the documents required by the petitioner are confidential in nature and those documents are privileged documents under Sections 123 and 124 of Indian Evidence Act. The petitioner has filed another petition on 29.05.2018 under Section 91 of Cr.P.C., for identical relief with different provision under Section 311 of Cr.P.C., and the petition is still pending before the trial Court. The petitioner has filed this present petition for identical relief as under Section 91 of Cr.P.C. The present petition is filed under Section 482 of Cr.P.C., without mentioning about the filing of the petition under Section 311 of Cr.P.C. The mentioned G.O.Ms. is a public document and before such publication to reach the



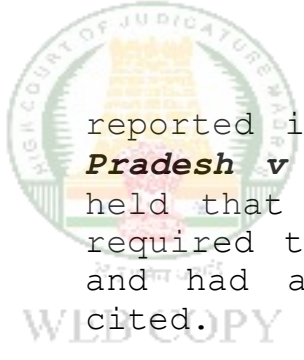
conclusion, various communication have been made between the Officers and such communications and notings made by one Officer to another Officer of the State are independent discharge of their official duties and not for exposure outside and hence, it is an unpublished official record relating to affairs of State. Hence, the prosecution claimed privilege under Section 124 of the Indian Evidence Act .

8.On the side of the respondent, it is stated that in Crl.O.P.(MD)No.31145 of 2012, this Court has decided that the sanction file would comprise communications, reports of various departments of Central Government and the notes recorded by the authorities such as officers of Chief Vigilance Office, Officers of the Deputy Director General of Vigilance office and also officers of Prime Minister and the sanction file would be comprising of important documents which have to be treated as confidential and it is incumbent upon the authorities concerned and the Court also to safeguard the secrecy as such. They are not published official records as provided in Section 123 of the Evidence Act. As described in Section 123 of the Evidence Act, those records remain as evidence derived from unpublished public records relating to the affairs of the State and as per Section 124 of the Evidence Act, in case of disclosure of such official information, certainly the public interest would suffer, since they were named to the public officers with official confidence. It is held that the documents contained in the sanction file are privileged documents.

9.On the side of the respondent, it is stated that in Crl.O.P.(MD)No.6913 of 2016, wherein , this Court has decided that the petition under Section 91 of Cr.P.C., without giving reasons as to how the documents called for are necessary and relevant for the just decision of the case and that a petition under Section 91 of Cr.P.C., cannot be filed for a fishing expedition. Thus, it is obvious that the accused have filed the present petition only to further prolong the case.

10.On the side of the respondent, it is stated that P.W.1 has clearly deposed that he has perused all the documents before issuing the sanction order. A copy of other documents relied on by the prosecution was already furnished to the petitioner and prayed this petition to be dismissed.

11.Records perused. A perusal of the records reveals that P.W.1 was already cross examined by the petitioner before the trial Court. The contention of the petitioner is that P.W.1 has passed the Sanction Order in a mechanical manner without applying his mind and the Sanction Order was only a copy from the draft sanction order annexed with the file. Only to prove that the draft Sanction Order and the present sanction order are similar, the petitioner insists upon the production of the file. P.W.1 has clearly deposed that he has perused all the records and then after being satisfied, he passed the sanction order. The Judgment



reported in (2011) 1 MLJ 669 SC in the case of **State of Madhya Pradesh v Ishwar Piraji Kalpatri**, the Hon'ble Supreme Court has held that while granting sanction, the officer concerned is not required to indicate that he had personally scrutinized the file and had arrived at the satisfaction for granting sanction is cited.

12.The citation produced by the petitioner are regarding the fact that the petitioner is not entitled to produce any material evidence at the stage of framing of charges and these Judgments are not relevant to the present facts of the case.

13.P.W.2 has clearly stated the he scrutinized the records and he was satisfied and that only after being satisfied, he issued the Sanction Order and as per the Judgment cited on the side of the respondent, the back file relating to the Sanction Order are official communication which are not to be produced under Sections 123 and 124 of Indian Evidence Act. In the above circumstances, there is nothing to interfere the order passed by the trial Court. Hence, the order passed by the trial court is confirmed and this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Chief Judicial Magistrate/Special Judge,
(Prevention of Corruption Act Cases),
Srivilliputhur.
2. The Inspector of Police,
Vigilance and Anti Corruption Unit,
Virudhunagar.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.G.Mariappan, Advocate Sr.No.80824

MRN

VB/SV/SAR2/11.09.2018/4P/5C

Cr1.O.P. (MD) No. 9649 of 2018
29.08.2018