

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.NO.5920 OF 2019 &
CRL.M.P.NO.3328 OF 2019

C.Shanmugam

.. Petitioner/Accused

Vs.

State Represented by
Deputy Superintendent of Police
Vigilance & Anti Corruption Wing
Erode.

Crime No.12/AC/2008/ER.

.. Respondent/Complainant

PRAYER:

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the order dated 27.02.2019 made in Crl.M.P.No.2128 of 2019 in Spl.C.C.No.32 of 2015 on the file of the learned Chief Judicial Magistrate/Special Judge for PC Act cases, Erode and set aside the same.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

ORDER

The Criminal Original Petition has been filed seeking to set aside the order passed by the learned Chief Judicial Magistrate, Erode, in Crl.M.P.No.2128 of 2019 in Spl.C.C.No.32 of 2015 dismissing the petition under Section 91 Cr.P.C., seeking to cause production of the documents which were in the custody of one Arumugam, former VAO of Kathirampatty Village.

2.The learned counsel for the petitioner would submit that the petitioner is an accused facing trial in Spl.C.C.No.32 of 2015 for the offences punishable under Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. He would submit that the prosecution case is that while the petitioner

was working as a Village Administrative Officer of Kathirampatty Village, Erode District, he is alleged to have demanded bribe of Rs.1,000/- on 24.09.2008 and again reiterated the said demand on 25.09.2008 from the complainant-P.W.2, for issuance of Chitta Adangal and FMB copy of the lands in SF No.67/1A and 67/2C of Chinnathikadu, Kathirampatty Village, Erode District. Further averment is that pursuant to the demand a trap was arranged on 26.09.2008 at the office of the Village Administrative Officer and after completing the formalities, trap was completed and the petitioner was arrested on 26.09.2008 at 6.25 pm.,. He would submit that after completion of trap, the respondent filed final report and it was taken on the file as Spl.C.C.No.32 of 2015 and during the course of trial, the prosecution has examined P.W.1 to P.W.9 and marked certain documents. He would further submit that it is the specific defence of the petitioner is that on the fateful day, P.W.2-Shanmugasundaram, had come to the office to remit the outstanding kist charges of Rs.1,000/- for his lands and after tendering Rs.1,000/- the respondent police has stage managed it as a case of demand and acceptance of bribe and arrested the petitioner.

3.He would submit that P.W.2 was in default of kist charges and it could be seen from the Village Account No.14 of Kathirampatty Village and supported by (i) Account No.14, (ii) "கைத்தண்டல்" , (iii) Book No.10 (ii) and (iv) arrears of kist charges. After the arrest of the petitioner all those documents were handed over to his successor-Incharge, viz., Arumugam, who had inturn handed over the above Village records to the respondent as per the oral instructions passed by the Tahsildar. Since, these documents were very crucial, essential and necessary documents for putting forth his defence, the petitioner sent a petition under Right to Information Act on 17.06.2017 calling for the following documents viz., (i) Documents in respect of account No.14 and 16 relating to Fasli 1417 with respect to patta Nos.36, 172 and 185 (ii) Account No.13 i.e., "கைத்தண்டல்" relating to demand in respct of Fasli 1417 for the period between February to September. The petitioner received a reply from the appellate Authority along with xerox copy of the report of VAO, Arumugam dated 16.12.2008, wherein he had stated that the said documents sought for had been handed over to the respondent police on the directions of Tahsildar and thereby, the appellate Authority had sent a reply stating that since the documents are not available in the Tahsildar office, they are unable to furnish copies of the same. However, they sent the copies of the Chitta Adangal showing that the property stands in the name of P.W.2.

4.The learned counsel would further submit that the petitioner had earlier filed CrI.M.P.No.3552 of 2017 under Section 91 Cr.P.C., directing the respondent to produce the

documents referred above which were stated to be in their custody, as per the statement of former VAO-Arumugam. In respect of the petition, the respondent had filed a counter stating that the above mentioned documents were collected by the investigating officer of the case during the time of investigation and after verification of the documents with the concerned witnesses they were returned to the former VAO-Arumugam and that they had only marked a Village Account No.16 relating to Fasli 1417 as Ex.P-13. In view of the counter by the respondent police, the trial Judge by order dated 06.02.2018 dismissed the petition. Thereafter, while entering defence the petitioner filed Crl.M.P.No.275 of 2019 under Section 243 Cr.P.C., seeking to direct the Tahsildar, Erode District to be present along with the documents (i) Account No.14, (ii) "கைத்தண்டல்", (iii) Book No.10 (ii) and (iv) arrears of kist charges, to be examined as a defence witness. The respondent filed a counter stating that the petitioner had filed the petition to protract the trial. However, the learned trial Judge was pleased to allow the petition and direction was issued to the Tahsildar, Erode District, to produce the documents and to testify with regard to the same. Consequent to the order, the Tahsildar had appeared before the Court and informed that he will search for the records and produce it before the Court. However on the next hearing date he appeared along with certificate of the Record Clerk stating that those documents were not available in the Taluk Office despite search and the learned trial Judge dismissed the application.

5.The learned counsel for the petitioner would further submit that since the Tahsildar had stated that the documents were not available with his office, the petitioner had again filed a petition in Crl.M.P.No.2128 of 2019, under Section 91 Cr.P.C., seeking to direct the said VAO to produce the above documents before the Court. The learned counsel for the petitioner would submit that the Tahsildar has not stated as if that the documents were neither available at the Taluk Office nor at the VAO Office, whereas, the trial Judge on the wrong pretext dismissed the petition stating that the Tahsildar who was summoned was unable to trace the documents at the Tahsildar Office as well as at the concerned VAO Office and that once it had been disclosed by the Competent Authority that the documents were not available, it would be a futile exercise. He would submit that it is really strange that despite the respondent having not filed any counter to the application the trial Judge had dismissed the application on a wrong pretext. He would submit that the petitioner cannot be convicted without a reasonable opportunity being given to him to present his evidence and if it is denied to him, there could not be a fair trial. He would further submit that fair trial includes fair and proper opportunities allowed by law to prove his innocence

and that adducing evidence in support of the defence is a valuable right and denial of that right means denial of fair trial. He would submit that it is the specific case of the petitioner to direct the former VAO-Arumugam to produce the documents which are in the custody of the VAO Office whereas the learned trial Judge dismissed the petition by rendering a finding that it would be a futile exercise much less a meaningless exercise and would submit that the trial Judge failed to consider that the above documents sought for are Village records and that if the documents are not available at the Taluk Office, it should be available with the office of VAO and that the officials cannot shy away from their responsibilities. He would further submit that a chance should have been given to the petitioner to call for the records from the office of VAO, Kathirampatty Village, Erode District.

6.He would rely on the Judgment of the Hon'ble Apex Court in the case of kalyani Baskar Vs. M.S.Sampooranm reported in (2007) 2 SCC 258 regarding fair trial.

7.The learned Additional Public Prosecutor vehemently opposed stating that the petition has been filed only with an intention of protracting the trial. He would also submit that the submissions of the counsel for the petitioner is wrong and would submit that the Tahsildar had given a letter along with the report of the Record Clerk to the trial Judge stating that the documents are not available despite due searches being made at the Tahsildar Office as well as at the VAO Office, Kathirampatty Village, and that the trial Judge has rightly stated that it would be futile exercise much less a meaningless exercise by calling for document which is not available as per records. He would further submit that the learned trial Judge while dismissing the earlier petition in Crl.M.P.No.3552of 2017 has rendered a categorical finding that when the original documents are not available in the concerned office, the petitioner can ventilate his grievances by resorting to the relevant provisions of the Evidence Act and press into service the xerox copies supplied to him by the Tahsildar to establish his defence. He would submit that the former VAO-Arumugam is now retired and the petition has been filed only to delay the trial.

8.I have gone through the order passed by the learned trial Judge. The learned trial Judge taking into consideration the letter of the Tahsildar, stating that the documents are not available at the Taluk Office and also at the VAO Office had rightly dismissed the petition rendering a finding that it would be a futile exercise to allow the petition for production of documents which are not available. Further, on perusal of the records in this case this Court has also noticed the finding of

the learned trial Judge in the earlier order passed in CrI.M.P.No.3552 of 2017 dated 06.06.2018, wherein, he had at para 11 rightly stated about the scope of defence available to the petitioner on account of non-production of documents sought for.

9.In view of the above, this Court is of the opinion that the petition filed by the petitioner seeking the former VAO-Arumugam to cause production of the documents which are already stated to be missing is nothing but a futile exercise and only to protract the trial. Hence, this Court finds no infirmity in the order passed by the learned trial Judge in CrI.M.P.No.2128 of 2019 dated 27.02.2019 and thereby it needs no interference.

10.At this juncture, the learned counsel for the petitioner would submit that the documents sought for are revenue records relating to a Village. The revenue officials by a single reply cannot shrug their responsibilities stating that the documents are neither available in the Taluk Office nor at the VAO Office and in such circumstances it is necessary that the petitioner has to summon the present VAO as well as the former VAO-Arumugam to elicit the facts in evidence with regard to the handing over of the documents by the former VAO-Arumugam to the officials of the respondent and with regard to the statement of the respondent that the documents were returned to him after investigation and also with regard to the procedure for maintaining the official revenue documents in the Village Office so as to prove that the investigating officer has wilfully burked these documents to prevent the petitioner from raising a valid defence regarding arrears of kist. In such circumstances the learned counsel would submit that interest of fair trial warrants that an opportunity may be granted to the petitioner to summon the former VAO-Arumugam and present VAO of Kathirampatty Village, Erode District to examine them by filing a petition under Section 311 Cr.P.C.,.

11.In kalyani Baskar Vs. M.S.Sampooranm reported in (2007) 2 SCC 258, the Hon'ble Apex Court has held that

"12.The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed and the courts should be zealous in seeing

that there is no breach of them."

12.This Court as s Supervisory Court has got a duty to weigh the balance with regard to the rights of the accused in defending his case and the progress of the case and thereby while confirming /approving the impugned order passed by the learned trial Judge, this Court opines that it would be appropriate in the interest of justice and fair trial an opportunity should be granted to the petitioner to summon and examine Arumugam, the former VAO of Kathirampatty Village to clarify with regard to the limited extend of handing over the documents to the Investigating Officer during investigation and with regard to the statement of the respondent that the documents were returned to him after investigation, and the present VAO of Kathirampatty Village, to clarify with regard to the procedure of maintenance of Village records.

13.In view of the above, liberty is granted to the petitioner to file a petition under Section 311 Cr.P.C., to summon Arumugam, the former VAO of Kathirampatty Village and the present VAO of Kathirampatty Village and on such petition being filed the learned trial Judge shall fix a date for their appearance and on their appearance the petitioner shall complete examining them on the same day without fail.

14.With these observations, the Criminal Original Petition stands disposed of. It is made clear that the process of summoning and examining the witnesses shall be completed within a period of two weeks from the date of receipt of a copy of this order. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate/
Special Judge for PC(Act Cases),
Erode District.
2. The Deputy Superintendent of Police,
Vigilance & Anti Corruption Wing,
Erode. Crime No.12/AC/2008/ER.

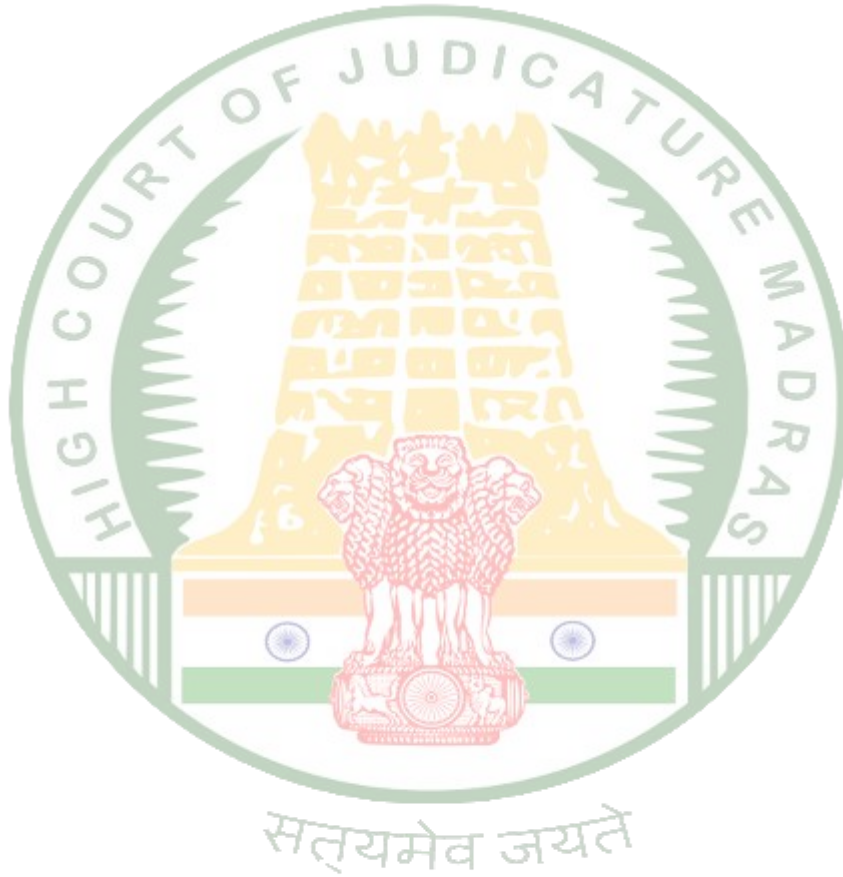
Copy To

The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.20655

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CrI.M.P.No.3328 of 2019

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