IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

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THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.3964 of 2021
and
Crl.M.P.No.2387 of 2021

Devarajan,
S/o.Periyasamy ... Petitioner/Accused

Vs.

The State,
By the Inspector of Police,
Vigilance and Anticorruption,
(CR.No.2/AC/2011)
Salem. ...Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the order dated 03-12-2020 made in Crl.M.P.No.165 of 2020 in Spl.C.C.No.85 of 2014 on the file of the Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem, set aside the same and allow the Criminal Miscellaneous Petition.

For Petitioner : Mr.M.Devaraj

For Respondent : Mr.T.Shunmugarajeswaran, Government Advocate (Crl.Side)

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ORDER

(This case has been heard through video conference)

This Criminal Original Petition has been filed by the Petitioner/Accused, seeking to call for the records in Crl.M.P.No.165 of 2020 in Special C.C.No.85 of 2014, dated 03-12-2020, on the file of the Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem, dismissing the petition filed under Section 243 read with 311 of Cr.P.C., and Section 22 of the Prevention of Corruption Act and to set aside the same and allow the Criminal Miscellaneous Petition.

2.The brief facts of the prosecution case is that the petitioner is the sole accused facing trial for the offence under Section 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. The case of the prosecution is that the petitioner had demanded a Monthly Mamool from A.Dhayalan (P.W.2) who was employed as Malaria Mazdoor. The Mamool was demanded on 11.01.2011, for the months of December 2010 and January 2011 stating that the defacto complainant had received the salary at that time and the petitioner had insisted the defacto complainant to pay the amount on the next day. The defacto complainant /P.W.2 had given a complaint pursuant to which, a trap was laid and when the amount was paid on 12.01.2011, the petitioner was caught red handed while receiving the amount and thereafter, he was arrested.

3.After completion of investigation, charge sheet was laid and during trial, the prosecution has examined P.W.1 to P.W.20 and the prosecution side evidence was closed on 12.02.2020. The petitioner was examined under Section 313 Cr.PC., on 05.03.2020 and the case was adjourned for defence side witness on 11.03.2020. At that stage, the petitioner had filed a petition under Section 243 read with 311 Cr.P.C., and under Section 22 of the Prevention of Corruption Act on 13.03.2020, to issue summons to the witnesses for production of documents and to tender evidence.

4.The Trial Court, finding that no valid reasons have been stated in the petition to show that the examination of said witnesses is very much essential for disposal of the main case on merits had dismissed the petition, against which, the present petition has been filed.

5.Learned counsel appearing for the petitioner would submit that the petitioner is a sole accused in this case and he has been charged for having received bribe and that he was alleged to have been caught red handed while accepting the bribe. He would submit that Section 20 of the Prevention of Corruption Act operates heavily against the petitioner and a presumption is cast against him and the petitioner is bound to rebutt the presumption by letting in evidence by way of defence. It is the case of the petitioner that the defacto complainant / P.W.2 was known to the petitioner for several years and that both of them are the members of the Salem Corporation Employees Co-op., Thrift Credit Society and they have borrowed loans and they have stood as sureties for the loans taken by each other. It is an admitted case that taking of loans and standing surety to each other for the loans is admitted by P.W.2. Further, it is the case of the petitioner that P.W.2 did not repay the loan properly and the petitioner being the surety for the loans taken by P.W.2 had repaid the amount and closed the loan account and that the amounts which was handed over by P.W.2 that was the amount repaid by the petitioner on behalf of P.W.2. A specific suggestion had been put to P.W.2, that he had not repaid the loan amount within the period of loan and he has denied the same and thereby, there is a bounden duty cast on the petitioner to call for the records pertaining to the loan account details to prove that P.W.2 has not repaid the loan amount properly and that it is the petitioner who has repaid the loan amount on behalf of him and that was the amount which was handed over to the petitioner by P.W.2 and thereby, the production of those documents and examination of the officer of Salem Corporation Employees Co-op., Thrift Credit Society concerning the loans are very much essential for rebutting the presumption which is operating against the petitioner. Further, P.W.2 was also having enmity against the petitioner, since, the petitioner came to know that P.W.2 has obtained employment in the said corporation by producing false and fabricated documents. P.W.2 is actually the son of one Arayee whereas, he has joined employment in the said Corporation on compassionate grounds claiming himself to be the son of one Kuppayee based on fabricated and false documents and thereby, the documents relating to the compassionate appointment details of P.W.2 is very much essential to be marked.

6.Further, the petitioner has burden to prove that the defacto complainant is not the son of Kuppayee and he is the son of Arayee and thereby, the Legal Heir Certificate issued in favour of Arayee have to be marked to prove that there was enmity between them due to which a false complaint has been given against the petitioner. Whereas, the learned Trial Judge, without taking into consideration that the evidences are very much essential for arriving at just a decision had dismissed the petition. Further, the learned Trial Judge had lightly dealt with the matter and had held that the fact that P.W.2/ Dayalan has manipulated the records and obtained job on compassionate ground is not the issue that is to be decided and had dismissed the petition. He would submit that the burden which is on the petitioner is so heavy and that the petitioner has to prove that there was enmity existing between P.W.2/ Dayalan and the petitioner and that is the reason for giving a false complaint against him and that the Trial Court has also rendered a finding that the petition has been filed for the purpose of vexation or delay or for defeating the ends of justice whereas, it is not so.

7.Learned counsel would submit that the petitioner was examined under Section 313 Cr.P.C. on 05.03.2020 and thereafter, the case was posted for defence side evidence on 11.03.2020 and that within two days on 13.03.2020, the petition has been filed. The petitioner had not delayed the proceedings at any point of time and the petitioner was not the reason for the delay in the trial. Though the petition had been filed on 13.03.2020, thereafter, the Courts were closed on account of Covid-19 and the learned Judge has passed orders in the petition on 03.12.2020 and the revision has been filed in time. The petition has not been filed for the purpose of vexation or delay or for defeating the ends of justice.

8.Learned counsel for the petitioner would further submit that the defacto complainant is the biological son of Arumugam and Arayyee. After the death of said Arumugam, a Legal Heir Certificate has been issued by the Head Quarters, Deputy Tahsildar in Certificate No.PAMU/ 1804/ 2001 (A4) dated 22.03.2001, in which, Arayyee and P.W.2 have been shown as legal heirs of the deceased Arumugam. Whereas, by furnishing the false particulars, P.W.2 has obtained a false certificate claiming himself to be the legal heir of one Kuppayee wife of Palani @ Arumugam, and the Certificate has been issued by the Head Quarters, Deputy Tahsildar in Certificate No.PAMU/28338/90/A9 dated 15.12.1990. Thus to prove the fact that P.W.2 is the legal heir and son of the deceased Arumugam and Arayyee and not the son and legal heir of Kuppayee, the Head Quarters Deputy Tahsildar of Salem has to be examined. He would reiterate that Section 20 of the Prevention of Corruption Act, operates much heavily against the petitioner and the petitioner has to rebut the case by letting in evidence and thereby, summoning the witnesses and marking of the documents are very much essential for arriving at just decision of this case. Further, the witnesses sought to be called in defence have not been cross examined earlier and thereby, the order passed by the learned Judge has to be set aside and the petition has to be allowed

9.The respondent has filed the counter.

10.In the counter, it has been stated that the petitioner had demanded a sum of Rs.500/- as monthly mamool from the defacto complainant, P.W.2 / Dhayalan, who was working as Malaria Mazdoor under the supervision of the petitioner at Sooramangalam Zone-1 of Salem City Municipal Corporation, Salem. On 11.01.2011, the petitioner had demanded the monthly mamool and threatened him that he would send adverse report against the defacto complainant. The defacto complainant had received salary for the month of December 2010 and on the next day of salary when the complainant reported for duty, the petitioner/accused had demanded a sum of Rs.500/-. The defacto complainant had replied that the salary amount was spent for his children's education and that he requested the petitioner that he would pay the monthly mamool on the next day. The petitioner/accused had reiterated his earlier demand of Rs.500/- for the month of December 2010 and also demanded Rs.500/- for the month of January 2011, totaling to a sum of Rs.1,000/- as bribe for not sending any adverse reports against the defacto complainant, even if the defacto complainant was discharging his duties correctly and directed him to pay a sum of Rs.1,000/- on 12.01.2011 at his office, during the morning roll call hours. As the defacto complainant was not willing to pay the illegal gratification to the petitioner/accused he had given a complaint on 11.01.2011 at 17.30 hours and lodged a written complaint to the Inspector of Police, V & AC, Salem and after adopting formalities, the respondent has registered a case in Crime No.2/AC/2011 under Section 7 of the Prevention of Corruption Act, 1988. Based on which, a trap was laid on 12.01.2011. Pursuant to which, the petitioner was arrested red handed while receiving the illegal gratification. The phenolphthalein test was also proved positive and thereafter, investigation was conducted and the final report has been filed. The documents sought for were not relevant for arriving at a just decision.

11.Mr.T.Shunmugarajeswaran, learned Government Advocate (Crl.Side) appearing for the respondent/state would oppose stating that the learned Trial Judge finding that summoning of the witnesses has no relevance to the case or the defence of the petitioner has rightly rejected the petition. He would submit that the petition has been filed only to delay the process of trial.

12.He would further submit that during the course of trial, P.W.1 to P.W.20 have been examined on the side of the prosecution. P.W.2 was examined on 06.04.2014 and he was cross examined on 24.04.2014 and the prosecution evidence was closed on 04.12.2019 with the examination of P.W.20 and he was cross examined on 05.02.2020. The petitioner/accused was questioned under Section 313 (1) (b) Cr.P.C., and he has not filed the list of defence witnesses on 13.03.2020. Thereafter, the petitioner had filed a petition under Section 243 r/w 311 Cr.P.C., and under Section 22 of the Prevention of Corruption Act, 1988. Further there is no whisper in the petition regarding the forged documents filed by the defacto complainant in getting appointment on compassionate ground. Further, the petitioner had not taken any steps to summoning the documents before cross examining P.W.2 on 24.04.2014 and only after the lapse of 6 ½ years, the petition has been filed to drag on the proceedings.

13.Learned Government Advocate would submit that the claim of the petitioner has no relevance to the defence. Though P.W.2 was cross examined on 24.04.2014, the petitioner had not taken any steps to call for those documents at that relevant point of time and the Trial Court had rightly given a finding that the petition has been filed belatedly only for the purpose of delaying the trial and to cause vexation and dismissed the petition.

14.At this juncture, learned counsel for the petitioner would submit that it is not an ordinary criminal trial. It is not the case where the prosecution has to prove its case. In this case a statutory presumption is cast under Section 20 of the Prevention of Corruption Act, against the petitioner and the petitioner has to disprove the case by letting in evidence and the petitioner has categorically taken a defence that the amounts which were handed over to the petitioner by P.W.2 are the amounts which were earlier repaid by the petitioner towards loan taken by P.W.2 from the Co-operative Society for which the petitioner stood as a guarantor. Though P.W.2 has accepted that the petitioner stood as sureties for the loan taken by him, he has carefully evaded to answer that the loan amounts were not properly repaid by him and thereby, the petitioner has a duty to call for the records from the Co-operative Thrift Credit Society to prove that P.W.2 has not repaid the loan amount properly and the petitioner has repaid the same on behalf of him. Further, the petitioner also has to prove that there was existing enmity between the petitioner and the defacto complainant/P.W.2 on account of the knowledge of the petitioner that P.W.2 had taken employment on compassionate appointment by producing fabricating documents claiming himself to be the legal heir of deceased Kuppayee. Whereas, he is the son of Arayee and thereby the petitioner has to call for the records relating to P.W.2's employment on compassionate ground that he has been given employment as legal heir of one Kuppayyee and further the petitioner has to call for the records from the Revenue Department to prove that the defacto complainant/ P.W.2 is not the son of Kuppayyee and he is the son of Arayyee and thereby all the above documents are essential. Further, at no point of time there had been a delay on the side of the petitioner, the petitioner had been cooperating and he is not the reason for delaying the trial and that only due to Covid-19 there was no progress in the trial.

15.Heard the counsels and perused the materials placed on record.

16.Admittedly, a trial under the Prevention of Corruption Act cannot be taken as usual criminal trial. In this case, there is a statutory presumption under Section 20 of the Prevention of Corruption Act, which operates against the petitioner/accused. The petitioner has a burden to rebut the presumption and in this case at the stage of defence this petition has been filed seeking to call for the records to prove that the petitioner had paid the outstanding loan amount of P.W.2. While cross examining, the petitioner has put a specific question to P.W.2 whether he had repaid the loan within a specific period and was any action taken against him, for which P.W.2 has replied that he was not aware of it and thereby, a burden is cast on the petitioner to call for the records to prove the same. Further, a specific question had been put to P.W.2 that whether he had been appointed on compassionate ground as legal heir of one Kuppayyee and he had accepted the same, whereas, it is the case of the petitioner that the P.W.2 is the son of one Arayyee and that he has falsely claimed himself be the son of Kuppayyee and joined duty on compassionate grounds as her legal heir. It is the contention of the petitioner that since the petitioner came to know about it there was existing enmity between them and that was also one of the reason for giving a complaint against him and thereby the petitioner has a duty to call for the records relating to the Legal Heir Certificates of deceased Kuppayyee and deceased Arayyee to prove that P.W.2 had joined duty on submitting fabricated documents. This Court is of the opinion that the petitioner has to prove his case by summoning the witnesses and marking those documents. Further, in the witnesses have not been previously cross examined and in the opinion of this Court, the petition has not been filed for vexation or delay or for defeating the ends of justice.

17.At this juncture, the Government Advocate (Crl.Side) would submit that for marking those documents, the Commissioner of Salem Corporation, Salem and the Tahsildar, Salem may not be required to be examined and any responsible officer from the Salem Corporation, Salem Corporation Employees Co-op., Thrift Credit Society and from the (Revenue Department), O/o.Head Quarters Deputy Tahsildar, Salem may be called for production of those documents and evidence.

18.In view of the above, the Criminal Original Petition stands allowed and the order passed by the learned Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem made in Crl.M.P.No.165 of 2020 in Special C.C.No.85 of 2014, dated 03.12.2020 stands set aside. It is made clear that the petitioner shall furnish the specific details of the records to be called for with proper description and designation of the officers. The Trial Court shall exercise its discretion in calling the appropriate officer for giving evidence before the Court.

19.With the observation, the petition stands closed. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

SSI

To

1. The Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem.

2. The Inspector of Police,
   Vigilance and Anticorruption,
   Salem.

3. The Public Prosecutor,
   High Court of Madras,
   Chennai.

+1cc to Mr.M.Devaraj, Advocate, S.R.No.16651

Crl.O.P.No.3964 of 2021 and
Crl.M.P.No.2387 of 2021

AK-II(CO)
TE (16/04/2021)