IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.No.7652 of 2021
and
CRL.M.P.No.5080 of 2021

Pandian
S/O.T.K.Chinnasamay,
Junior Engineer 1st Grade,
TNEB, Nethimedu Rural (O & M),
Salem District, ... Petitioner

Vs.

The State,
By Inspector of Police,
Vigilance and Anti-corruption,
(CR.No.4/AC/2007/SL))
Salem. ... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the order dated 09.12.2020 made in Crl.M.P.No.101 of 2020 in Spl.C.C.No.66 of 2014 on the file of the Special Judge (Special Court for Trail of Cases under the Prevention of Corruption Act) Salem and set aside the same.

For Petitioner : Mr.M.Devaraj

For Respondent : Mr.E.Raj Thilak
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to call for the records relating to the order dated 09.12.2020 made in Crl.M.P.No.101 of 2020 in Spl.C.C.No.66 of 2014 on the file of the Special Judge (Special Court for Trail of Cases under the

Prevention of Corruption Act) Salem and set aside the same.

2. The petitioner herein is facing a trial for the offence under Sections 7 and 13 (2) R/W 13 (1) (d) of the Prevention of Corruption Act 1988, before the Special Judge (Special Court for Trail of Cases under the Prevention of Corruption Act) Salem.

3. The case of the prosecution is that the petitioner had demanded from the complainant to pay Rs.17,000/- for giving electricity connection to the Rice Mill of the defacto complainant. As per the allegation made in the complaint, the complainant S.Venkatachalam had constructed a new rice mill in the residential campus at D.No.4/337 and applied for the service connection in the 1st week of February 2007 seeking 25 HP. On the next day at 4 pm, the petitioner had been to the residence of the defacto complainant along with wireman for taking measurement for the erection of post and had demanded Rs.17,000/- as illegal gratification and informed the complainant to pay the deposit amount separately. On 06.02.2007, when the complainant met the petitioner in his office and remitted Rs.12,050/-, the petitioner is alleged to have reiterated his demand, for which, the complainant expressed his inability. On the same day, the petitioner alleged to have gone to the house of the complaint at 5.30 pm and informed that the estimate was ready and reiterated the demand of Rs.17,000/-. On 14.02.2007, the defacto complainant met the petitioner in his office at 2.30 pm and was informed by the petitioner that the estimate was ready and if the amount was paid, the same would be forwarded to the higher authorities. On 16.02.2007, the complainant had been to the electricity board office to make entry in the fuse called register in respect of SC.No.98 in the name of his father, during which time also the petitioner has reiterated his earlier demand and instructed the complainant to pay the same before 19.02.2007. On 19.02.2007 at 11 am, the defacto complainant had been to the office and since the petitioner was on leave contacted through the mobile, who informed that the complainant could meet the petitioner on 20.02.2007 at 11.30 am. On 20.02.2007, the complainant met the petitioner in his office and handed over Rs.10,000/- towards the gratification, which was received by the petitioner for effecting service connection and accordingly the petitioner was arrested.

4. It is averred in the affidavit that the prosecution has examined PW1 to PW20 and the prosecution side evidence was closed on 20.11.2019. The petitioner was examined under Section 313 of Crl.P.C on 31.12.2019 and the case was adjourned for defence side witnesses on 08.01.2020. On 08.01.2020, the petitioner had filed a petition under Section 243 r/w 311 of Crl.P.C to issue summon to the witnesses, to produce documents and to tender evidence, but the same was dismissed on 09.12.2020.

5. It is also averred in the affidavit that the petitioner had filed the above petition to summon the Zonal Commissioner of Kondalampatty Municipal Corporation and to produce the Assessment details for the property at Door No.4/337, Kamaraj Nagar for the year 2004 to 2009, details of the tax assessment in respect of the defacto complainant for the said period and the tax assessment in the name of the defacto complainant for the year 2007 and the documents relating to Kondalampatty Ward No.50, Door No.456 and 4/337A, Annadhanapatty, Block No.4, Subbu Gounder Assessment No.164785 and the other details. The defacto complainant had misused the tax receipt issued in respect of the property belonging to his father to show that it is an existing rice mill for which additional load is to be supplied, but the fact that the same is a new building for which the petitioner will have to pay additional deposit and not the earlier deposit made and as such the acceptance of Rs.10,000/- is for the additional deposit and not a bribe money. This aspect can be proved only by production of the tax receipts and the tax details along with the approved plan. But the Trial Court has erroneously dismissed his petition based on the contention raised by the prosecution that the present case is in respect of deciding the demand and acceptance of bribe and not deciding the title of the premises in question where the service connection is to be effected.

6. A counter affidavit has been filed by the respondent, wherein, it is stated that it is false to allege that PW2 Tr.Venkatachalam misused the house tax assessment receipt which stood in the name of his father in getting the EB service connection from the petitioner / accused. PW2 was examined in chief on 16.12.2015 and Ex.P2 to Ex.P7 were marked and M.O.1 was also marked and he was cross examined by the defence on

20.01.2016 and 11.02.2016. PW2 categorically stated in his chief as well as in the cross examination that he presented the application Ex.P2 mentioning the D.No. for which the service connection number is 4/337 and he enclosed the receipt which was mentioned as 4/337-A. PW2, during the cross examination, clearly deposed that the D.No.4/337 was his residential house and D.No.4/337-A is a Rice Mill for which he claimed the new service connection and he has enclosed the sale deed and also the Lincense obtained from the Tamil Nadu Small Scale Industrial Development Corporation. Further, when PW2 was questioned regarding the Tax Receipt for D.No.4/337-A and corrections made by the officials, it was clearly explained by him in his evidence during the cross examination on 20.01.2016. It is further equally false to allege that the defacto complainant PW2 enclosed the receipt of the Kondalampatti Zone in Annathanapatti Zone and claimed the service connection. It is further false to allege that the petitioner / accused to falsify the prosecution case, summoned the building approval for rice mill and also claimed that the money demanded is only an additional deposit amount to be paid by the PW2 Tr.Venkatachalam. It is further submitted that PW2, during the cross examination, categorically stated that he has not obtained any building approval in constructing the rice mill and not even a suggestion was put to PW2 that the amount demanded was an additional deposit amount to be paid by PW2. It is submitted that PW10 Tr.Ponnuvel, the then Assistant Engineer has categorically deposed that the application of PW2 was registered in the Application Register in Page 57 in SL.No.12 on 06.02.2007 by the accused petitioner and Rs.50/- was application fee and Rs.12,000/- towards deposit amount were fixed and the corresponding entries were marked as Ex.P14. There is not even a suggestion put to PW10 regarding the additional deposit amount as claimed by the petitioner / accused. It is an invented story by the defence to escape from the prosecution case and not supported by any documentary evidence.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

8. On perusal of the records, it is seen that the complainant namely Venkatachalam had constructed a New Rice Mill in the residential campus at D.No.4/337 and applied for

electricity connection, for which, the petitioner had demanded Rs.17,000/- from the complainant apart from the amount he remitted towards electricity connection. The complainant had expressed his inability to pay the excess amount claimed by the petitioner, but the petitioner had insisted him to pay the said amount. Hence, a complaint has been lodged against him.

9. It is also seen from the records that the respondent police, after investigating the matter, filed a charge sheet before the Chief Judicial Magistrate, Salem and the same was taken on file in Spl.C.C.No.133 of 2007. Subsequently, the case was transferred to Special Judge (Special Court for Trail of Cases under the Prevention of Corruption Act) Salem and renumbered as Spl.C.C.No.66 of 2014. The prosecution side evidence was opened on 16.05.2014, and after examining PW1 to PW20, the prosecution side evidence was closed on 20.11.2019 and the petitioner / accused was examined under Section 313 Cr.P.C. on 31.12.2019. Thereafter, the case was posted for defence witness on 08.01.2020. On 08.01.2020, the petitioner had filed the petition under Section 243 r/w 311 of Cr.P.C and under Section 22 of PC Act, to issue summon to the witnesses, to produce documents and to tender evidence.

10. The petitioner / accused has claimed before the Court below that the house tax receipt enclosed with the application is a tampered document, which relates to a property situated in another area. Hence, summoning the Assessment Officer of Kondalampatty Zonal Municipal Corporation is very essential to disprove the prosecution case and to prove the facts.

11. On the side of the respondent / prosecution, it was claimed that the petitioner called upon the records and assessment register for D.No.456, 4/337-A or 4/337. The D.No.456 is not relevant to this case and PW2 Venkatachalam deposed in his evidence that he claimed service connection for D.No.4/337-A and there is no document produced by the petitioner to show that the assessment stands in any other person other than the complainant (PW2). The petitioner has filed this application to call for, the assessment register, tax receipt issued in the name of the father of the complainant and details of tax collection, for the period 2004 to 2009, plan approval and tax receipt for the rice mill for the year 2007 and 2008 along with relevant documents. But the Court is not deciding the title of

the complainant in this case and the present case is in respect of deciding the demand and acceptance of bribe for effecting service connection for the proposed rice mill.

12. On going through the order passed by the Court below, this Court observes that though it was contended by the petitioner that the complainant misused the tax receipt issued in respect of the property belonging to his father, no document has been produced by the petitioner to prove the same. When the petitioner specifically states that the complainant fabricated the records and remitted only part of the deposit amount for effecting service connection to the proposed rice mill, he ought to have produced necessary document before the Court below to prove the same. But, no such document has been produced by the petitioner. As contended by the learned counsel for the respondent / prosecution, the documents sought for the petitioner to be produced before the Court are irrelevant to the facts of this case as the present case is filed only to decide the additional deposit amount claimed by the petitioner and not to decide the title of the complainant. It is an admitted fact that the petitioner had claimed additional deposit amount from the complainant for giving electricity connection to the proposed rice mill. While being so, it is for the petitioner to prove his case by producing proper evidence before the Court below and he cannot insist the court to issue summon to the persons who are not relevant to the issue of this case. The Trial Court has carefully considered the case of the petitioner and rightly dismissed his petition based on the contention raised by the respondent / prosecution that the documents claimed by the petitioner will no way useful for the petitioner to defend his case, and this Court is not inclined to interfere with the same.

13. Accordingly, this Criminal Original Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

raja

To

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

2.The Inspector of Police, Vigilance and Anti-corruption,
Salem.

3.The Public Prosecutor,
High Court, Madras-104.

Copy To:

The Section Officer,
Criminal Section, High Court,
Madras-104.

+1cc to M/s.M.Devaraj, Advocate, S.R.No.54411

CRL.O.P.No.7652 of 2021
and
CRL.M.P.No.5080 of 2021

SSV(CO)
SB(02/11/2021)