



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

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THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN
Crl.O.P.No.9381 of 2022
and
Crl.M.P.No.5466 of 2022

Vadivazhagi

... Petitioner/Accused

Vs.

State Represented by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai City-5 Detachment,
Chennai - 600 016.

... Respondent/Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 31.03.2022 made in Crl.M.P.No.1398 of 2021 in Cr.No.2/AC/2016/CC-IV on the file of the Special Court for the cases under Prevention of Corruption Act at Chennai.

For Petitioner : Mr. S. Veeraraghavan

For Respondent : Mr. E. Raj Thilak,
Additional Public Prosecutor

O R D E R

This petition is filed to set aside the order made in Crl.M.P.No.1398/2021 in Crime No.2/AC/2016/CC-IV on the file of the Special Court for the cases under Prevention of Corruption Act, Chennai.

2. The aforesaid petition was filed under Section 311(A) of Cr.P.C., by the respondent that is Mr.P.Lakshmikanthan, the present Investigating Officer of this case. It is alleged in the petition that the petitioner/accused is the formerly Superintendent Project-VII and formerly Child Development Project Officer, Project-I, Integrated Child Development Scheme, Royapuram, Chennai for the period from 2012 to 2016. During the said period, the petitioner by abusing her



official position committed criminal misappropriation by forging signatures of her Superior Officers viz., Tmt.Shabana Begam and Tmt.K.Uma Maheswari, prepared bills and submitted to the Pay and Accounts Office (North) and swindled Government funds to the tune of Rs.4,14,49,890/-. It is revealed during the course of investigation that as a Superintendent in Project-VII and as Child Development Officer, Project No.1, she had forged her Superior Officer's signatures in more than 123 bills and other related papers. Now, the investigation has almost come to a point where it is required to compare petitioner's specimen signature, to compare with the signature, she has suspected to have forged in 123 bills. It is further submitted that petitioner was granted anticipatory bail in CrI.O.P.No.26407 of 2016. She was asked to appear for enquiry and she, citing health issues not appeared and another notice dated 22.11.2021 for her appearance on 25.11.2021 was given but she failed to turn up. Therefore, the petition.

3. This petition was opposed by the petitioner before the trial Court, alleging among other things that the respondent has not arrayed necessary persons as accused in this case. The signatures of Tmt.Shabana Begam and Tmt.K.Uma Maheswari were obtained by the respondent and she shall not be forced to sign similar signature of the aforesaid persons.

4. On considering the rival submission, the trial Court allowed the petition. Challenging the said order, this petition is filed.

5. Learned counsel for the petitioner submitted that the petition filed under Section 311(A) Cr.P.C., is not legally maintainable for the reason that the petitioner was not arrested in this case. Though, the petition was filed under Section 311(A) of Cr.P.C., the learned trial Judge passed the order under Section 73 of Indian Evidence Act. The prayer in the petition reads that the respondent requires the specimen signature of not only the petitioner but the direction is sought for the specimen signatures of Tmt.Shabana Begam and Tmt.K.Uma Maheswari which is not legally entertainable. Therefore, he prayed for setting aside the order of the learned Special Court for the cases under Prevention of Corruption Act, Chennai and for dismissal of the petition filed under Section 311(A) of Cr.P.C.

6. Per contra, learned Additional Public Prosecutor submitted that petitioner was granted anticipatory bail, with a condition that she should cooperate with the respondent police



during the enquiry. Despite the summons had been sent for appearance for enquiry, petitioner evaded to appear before the Investigating Officer for enquiry. The comparison of petitioner's admitted signature with the alleged forged signature is absolutely necessary for taking forward the investigation in this case. Though, the prayer was to get the specimen signature of the petitioner and also the specimen signature of Tmt.Shabana Begam and Tmt.K.Uma Maheswari, the learned trial Judge had restricted the relief granted, in the sense that petitioner was directed to give only her specimen signature and it was made clear that she should not be forced to sign similar specimen signatures of Tmt.Shabana Begam and Tmt.K.Uma Maheswari.

7. As regards the legal submission of the learned counsel for the petitioner, it is the response of the learned Additional Public Prosecutor that the position with regard to the necessity of arrest for directing the accused to give the specimen signature under Section 311(A) Cr.P.C., he drew the attention of this Court to the judgment reported in 2017 SCC OnLine Mad 36949, wherein, it is observed that

"17. On perusal of the aforesaid decisions, it is clear that a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein, but for the proviso it would be within purview of the enactment. The Code of Criminal Procedure is a procedural law and it is not substantial law. The learned counsel for the petitioner mainly relied on Proviso to Section 311-A Cr.P.C. When the said Proviso states that a person must be arrested for some time in connection with such investigation or proceeding, in the present case, the petitioner is neither arrayed as an accused nor a witness. The learned counsel for the petitioner relied on the said Proviso without mentioning the main enactment of when there is no doubt that the main provision is unambiguous and clear, its effect and tenor cannot be cut down by the Proviso. The proviso appended to Section 311A of Code must be read as a whole along with Section 311-A of the Code and it cannot be read in isolation."

8. Thus, the learned Additional Public Prosecutor submitted that it is not necessary for a person to be arrested for him to give specimen signature.



9. Considered the rival submission and perused the records.

10. From the submissions made by the learned counsel appearing for the parties, it is seen that this case involves misappropriation of public money to the tune of Rs.4,14,49,890/- allegedly by the petitioner by forging the signatures of her Superior Officers Tmt.Shabana Begam and Tmt.K.Uma Maheswari. It is a basic requirement to compare the disputed signature with admitted signature. The handwriting of the petitioner is absolutely necessary for coming to a right conclusion. It is specifically submitted by the learned Additional Public Prosecutor that after getting anticipatory bail, the petitioner had not cooperated with the investigating officer and did not appear for an enquiry. Left with no option, this petition is filed.

10(i). That apart, as rightly pointed out by the learned Additional Public Prosecutor, the legal position with regard to the need for arresting the person, for getting specimen signature is clarified in the judgment aforesaid. It is not necessary that the person should have been arrested at some point of time for getting specimen signature or handwriting. Therefore, this Court finds that there is no legal prohibition in requiring a person who is in anticipatory bail and not cooperating with the investigation, to give specimen signature.

11. Learned counsel for the petitioner drew the attention of this Court, though the petition was filed under Section 311(A) of Cr.P.C., the Court referring to Section 73 of Indian Evidence Act, allowed the petition. Section 73 of Indian Evidence Act reads as follows:-

73.Comparison of signature, writing or seal with others admitted or proved.-In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.



12. This Section makes it clear that the Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. It is also a settled proposition that if the Court felt that the Court cannot draw a conclusion on its own on comparison of disputed signature, it can also seek expert's opinion. Therefore, this Court finds that there is nothing wrong to invoke Section 73 of Indian Evidence Act to allow the petition.

13. For all these reasons, this Court finds the order passed by the learned Special Judge is right and appropriate. Therefore, this Court finds no reason to interfere with the order passed by the learned Special Judge. The order is confirmed and the petition is dismissed. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

AT
To

1.The Special Judge,
Special Court for the cases under
Prevention of Corruption Act at Chennai.

2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai City-5 Detachment,
Chennai - 600 016.

+1cc to Mr.S.Veeraraghavan, Advocate Sr.29003

Cr1.O.P.No.9381 of 2022 and
Cr1.M.P.No.5466 of 2022

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srg 10/06/2022