

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.01.2021

Pronounced on : 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.OP(MD).No. 866 of 2021

and

CRL.MP(MD).No. 393 of 2021

A. Lakshmanan : Petitioner / accused

Vs.

State rep. by
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Tirunelveli
(Crime no. 15 of 2005) : Respondent / complainant

PRAYER:- Criminal Original Petition filed under Section 482 Cr.P.C to call for the records pertaining to the order dated 06.07.2020 passed by the Special Judge, Special Court for Trial for Cases under Prevention of Corruption Act, Tirunelveli in Cr.M.P.No. 169 of 2020 in Spl.C.No.23 of 2014 dismissing the petition, dated 20.03.2020, filed under Section 91 Cr.P.C., and set aside the same.

For petitioner : Mr.N. Sudalai Muthu

For respondent : Mr. K.K. Ramakrishnan
Additional Public Prosecutor

ORDER

The petitioner is the accused in S.C.No. 23 of 2014, on the file of the Special Court for Trial for Cases under Prevention of Corruption Act, Tirunelveli. The petitioner was charged for the offences under Sections 7,12 and 13 (2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 and he is facing the trial.

2. It is pertinent to mention that the First Information Report came to be registered in the year 2005 and final report was filed in the year 2007 and that the said case is pending for the past 13 years since the date of cognizance.

3. It is also not in dispute that when the said case was pending for defence evidence, the above application under Section 91 Cr.P.C., came to be filed and that the learned Special Judge has passed the impugned order on 06.07.2020 dismissing the said application. Aggrieved by the said order, the petitioner / accused has come forward with the original petition.

4. The learned counsel appearing for the petitioner at the first instance would contend that the trial Judge after receiving the counter statement on 01.07.2020, during the Covid 19 Pandemic time, has dismissed the petition without hearing the petitioner's side and that the order impugned in the revision is liable to be set aside.

5. When the learned Additional Public Prosecutor was required to explain their stand, he would contend that the trial Judge, only after hearing both sides, has passed the order, now under challenge.

6. Immediately, the learned counsel appearing for the petitioner would submit that the learned trial Judge has not afforded sufficient opportunity to argue their case elaborately in physical mode, that he is not blaming or making any allegation against the judicial officer and that he is not pressing the said ground of attack.

7. The immediate response of the learned counsel in withdrawing the said allegation is very much appreciable. But since the said ground of

attack finds place in the main original petition, this Court is constrained to deal with the same.

8.As rightly contended by the learned Additional Public Prosecutor, the learned trial Judge has specifically observed that the order impugned was passed upon hearing the both sides. It is not the specific case of the petitioner that despite their opposition and objection to conduct the enquiry virtually, the trial Judge has proceeded with the case and passed the impugned order. During the Covid Pandemic period, the entire Country was working virtually. Since the petitioner has not raised any objection before the trial Court, he is estopped from canvassing or raising such a stand before this Court. The very lodging of a complaint that the petitioner was not given an opportunity to argue elaborately physically is very much against the orders of the Hon'ble Supreme Court permitting virtual hearing of the cases and the directions of this Court issued through various circulars during the Pandemic period for conducting the cases virtually.

9. Moreover, it is high time for the stakeholders of the Judiciary to refrain from making allegations or levelling charges against the Judicial

officers without any basis or iota of truth. More importantly, since the bar and the bench being the two sides of the same coin, the bar must discourage their clients and the litigant from raising baseless allegations and they must desist from incorporating the same in the pleadings.

10. Now, coming to the main aspect of the case, the accused by invoking Section 91 Cr.P.C., has prayed to send for 4 sets of documents allegedly from the custody of Forest Department, Commercial Tax Department and from the Court of the Judicial Magistrate. The trial Court has dealt with 4 sets of documents separately and observed that the petitioner / accused has not pleaded about the nature of the documents sought for and the reasons why he wanted to send for the same.

11. As rightly contended by the learned Additional Public Prosecutor, the petition filed by the accused does not contain any of the pleadings nor any particulars so as to attract Section 91 Cr.P.C., and it is necessary to refer the petition averments hereunder;

“(i) The above case is posted for cross examination of the defence witnesses.

(ii) Following documents are highly essential for the examination of the defence witnesses cited in the defence list.

(iii) Unless the following the documents send for, the petitioner will be seriously prejudiced his defence.

It is therefore, prayed that this Hon'ble Court may be pleased to send the following documents, which are specifically detailed in the particulars of documents hereunder and thus render justice.”

12. As rightly contended by the learned Public Prosecutor, the petitioner has nowhere whispered in his petition as to how the documents listed thereunder are connected with the case on hand, nature of the documents sought to be summoned, their bearing and relevancy for the nature of the consideration to be made as well as the necessity and desirability of the same. The power conferred under Section 91 Cr.P.C., are aimed at arming the Court or any officer in charge of a police station to enforce and to ensure the production of any document or other things “necessary or desirable” for the purpose of any investigation, enquiry, trial or other proceedings under the Code, by issuing a summons or written order to those in possession of such material.

13. Any party invoking Section 91 Cr.P.C., is bound to show the relevancy and necessity or desirability for the said documents. As already pointed out, the petitioner has nowhere stated about the necessity or desirability. It is settled law that Section 91 Cr.P.C., does not give an absolute right for the accused to ask for summoning any document and it is only when the Court on a consideration of facts and circumstances, considers that the production of the document or thing sought for is necessary or desirable for the purpose of the trial, enquiry or proceedings would summon the same, but, not otherwise. Hence, it is to be only seen as to whether the trial Court has judiciously and judicially exercised its discretion.

14. As rightly observed by the trial Court, the petitioner has nowhere stated in the petition that he had applied for the copies from the concerned office / or the department, but the same was rejected. Regarding S.No.4 documents allegedly to be sent for from the court of the Judicial Magistrate, Senchottai, the trial Court has stated that the petitioner can very well obtain the certified copies of those documents from the said Magistrate Court. The petitioner has not averred any reason or explanation

for not following that mode. It is not the case of the petitioner that he had invoked the provisions of the Right to Information Act, but the same was also ended in vein. As rightly contended by the learned Public Prosecutor, though the case was pending from 2007, the petitioner has not averred any reason or ground as to why this petition was not filed earlier.

15. The learned Additional Public Prosecutor as well as the learned Trial Judge had observed that the above petition has been filed only to protract and prolong the proceedings. On considering the entire facts and circumstances, this Court is in entire agreement with the view expressed by the learned Public Prosecutor as well as by trial Court. Hence, this Court decides that there is no infirmity in the impugned order passed by the learned Special Judge, Special Court for Trial for Cases for under Prevention of Corruption Act, Tirunelveli in Cr.M.P.No.169 of 2020, dated 06.07.2020. Consequently, this Court concludes that the original petition which is devoid of merits is liable to be dismissed.

16. In the result, this Criminal Original Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed.

03.02.2021

Index : Yes : No
Internet : Yes : No
trp/das

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

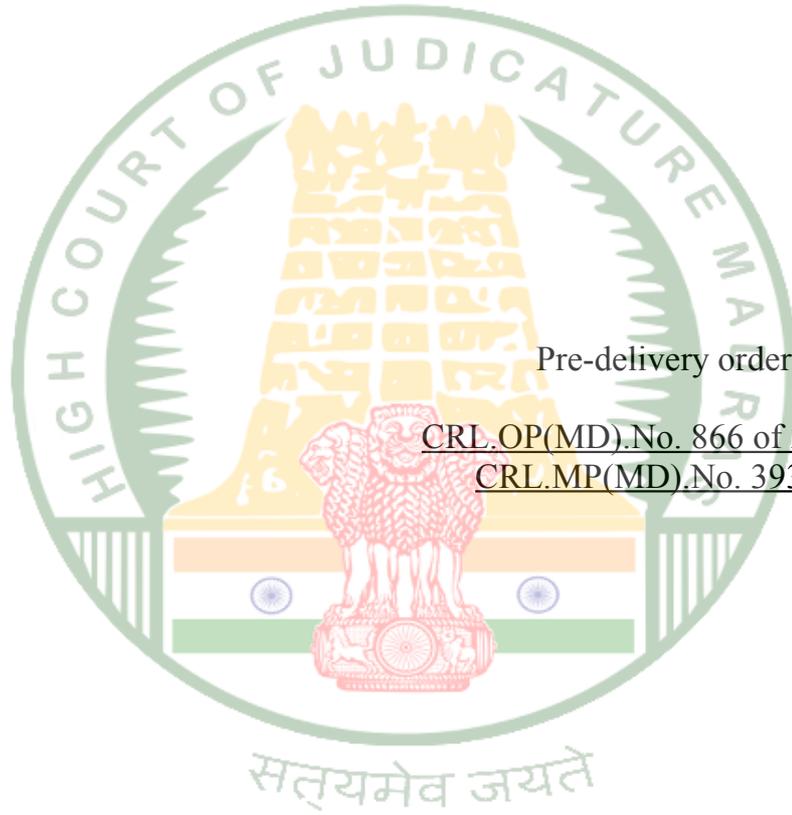
1.The Special Judge, Special Court for
Trial for Cases under Prevention of Corruption Act,
Tirunelveli.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CRL.OP(MD).No. 866 of 2021

K.MURALI SHANKAR,J.

trp/das



Pre-delivery order made in
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