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Court : Chennai

Decided On : Apr-27-2016

Judge : The Honourable Dr. Justice P. Devadass

Appeal No. : Crl.O.P. No. 8754 of 2016

Appellant : S. Kannan and Another

Respondent : State represented by the Deputy Superintendent of Police

Judgement :

(Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., praying to set aside the Order passed by the learned Special Judge/Chief Judicial Magistrate, Tiruvallur, dated 11.04.2016 made in Crl.M.P.No.2120 of 2015 in Spl. C.C.No.10 of 2010 and allow this Criminal Original Petition.)

1. This matter arises out of a sent for petition filed under Section 91 Cr.P.C.
2. Though a routine question had been cropped up, but it is put up in a new fashion, question of right of defence, extent of defence, constitutionally guaranteed right of the accused under Article 22(1) had shown.
3. Petitioners/accused are being prosecuted for their alleged commission of certain white collar offences before the learned Special Judge under PC Act/Chief

Judicial Magistrate, Tiruvellore. Investigation completed. Prosecution package has been produced. Charges were framed. Now, the stage is set for trial of those charges.

4. At this juncture, in the Trial Court, the petitioner filed CrI.M.P.No.2120 of 2015 under Section 91 of Cr.P.C. seeking production of the following documents for his effective defence:-

1. (a) General diary entries relating to Cr.No.19/2009/HQRS maintained chronologically for the date from 13.06.2009 to 13.5.2010.

(b) Visitors Entry-register maintained at the office of the Vigilance and Anti Corruption, SIC, Chennai 28 between 01.06.2009 to 17.06.2009.

2. The Chief Engineer, Distribution, Chennai Region South, TNEB, Annasalai, Chennai -2 to cause the production of the following documents :

a) Entire file (including current file and note file) generated in pursuance of proceeding No.009319/376/Admo/B1/2009-2 dated 27.04.2010 generated by the Office of the Chief Engineer, Distribution, Chennai Region South, TNEB, Annasalai, Chennai 2 pertaining to the report of the director of Vand AC, Chennai in the R.C.No.233/2009/EB/SIC dated 19.04.2010 and Cr.No.19/2009/HQRS and connected records thereon.

3. The Superintending Engineer, CEDC South, TNEB, Chennai to cause the production of the following documents :

a) Entire file (ncluding current file and note file) generated in pursuance of proceeding No.006334/308/Adm1/A4/F.DVand AC/10 dated 11.05.2010 generated by the Office of the Superintending Engineer, CEDC South TNEB, Chennai pertaining to the report of the Director of Vand AC, Chennai in the R.C.No.233/2009/EB/SIC dated 19.4.2010 and Cr.No.19/2009/HQRS and connected records thereon.

4. The Office of the Assistant Engineer OandM/TNEB/Nandambakkam at Manapakkam to cause production of the following documents :

- a) Service Connection Application Register for the period 10.06.2009 to 20.06.2009
- b) Estimate Sent Off Register from AE to AEE for the period June 2009.
- c) Registration Payment Register for the period June 2009.
- d) Entire Extension of Supply Docket pertaining to the 17 applications
- e) Work Order Application Register for the period June 2009
- f) Service Connection Estimate Register for the period June 2009
- g) Extension of Supply Payment register for the period June 2009.
- h) Service effected Register and Original Test Report register for the period June 2009.
- i) 17 Nos of Sale Deeds pertaining to the flats
- j) Domestic Application Register for the period June 2009.

5. The Office of the Assistant Executive Engineer/OandM/Ramapuram/CEDC/South Circle to cause the production of the following documents :

- a) Domestic Extension of Supply Register along with the estimate sanction copies

5. The Trial Court coming to conclusion that the crux of the case is whether the accused had demanded bribe and accepted the same for which the said documents are not necessary. With this ratio decidendi, the Trial Court dismissed the petition filed under Section 91 Cr.P.C.

6. According to the learned Senior Counsel for the petitioners, the view of the Trial Court is pedantic in nature. Lacking pragmatism. Right of defence cannot be curtailed or scuttled. Devising of the defence need not be controlled, curtailed, restricted or foreclosed nor defence be incapacitated in defending the accused. Of course, if it is for an hidden agenda, it is intended to prolong the trial, it is always

with the Court to nib it at the bud but not the real defence.

7. The learned Senior Counsel for the petitioners further submitted that in this case, to improbabilize the prosecution version of the case that the petitioners/A-1 and A-2 have demanded bribe to give electricity connection, that they have demanded certain sum of money as illegal gratification from the defacto complainant, it became necessary for the defence to look into the listed documents so as to put forth an effective defence. Extent and quantum of defence cannot be controlled. It cannot be restricted to a zero point. Therefore, the impugned Order in the nature of preventing putting up of effective defence will not stand the test of law.

8. On the other hand, the learned Additional Public Prosecutor would refer to the scope of the prosecution case and submit that there is no question of curtailment of the defence. But what the defence ask is extravagance. When all the required documents are supplied to them under Section 207 Cr.P.C., the present venture of the petitioners is a misadventure that is how it has become a fiasco in the trial Court. The witnesses mentioned and the documents listed in the memo of evidence are going to speak, to be exhibited and role of each witnesses and what they are going to speak in this case also has been stated and thus there is lot of time and opportunity for the defence to test the veracity of prosecution witnesses. In such circumstances, the Trial Court has rightly held that those documents are not necessary and dismissed their petition.

9. I have anxiously considered the rival submissions, perused the impugned Order of the Trial Court, the averments in the petition and also the counter filed by the prosecution and the relevant materials on record.

10. A white collar offence alleged to have been committed by A-1 and A-2, who were at the relevant time are Assistant Executive Engineer and Senior Engineer respectively in the TANGEDCO (Tamilnadu Generation and Distribution Corporation Limited). It is also alleged that each accused has prescribed a rate according to their post, namely, Rs.50,000/- and Rs.25,000/- respectively and they have demanded the same from one Raja, who set the criminal law in motion, who is stated to be employed with a builder. A trap was laid. Tainted cash were said to

have been recovered in the presence of witnesses, which was already toasted witty phenolphthalein powder. It is said to have turned pink placing the accused in a grim situation.

11. As already stated, the trial is to start. The fate of the accused is to be tested and the true colour of the version of the prosecution is yet to be seen.

12. At this juncture, a petition under section 91 Cr.P.C. has been filed by the petitioners before the Trial Court.

13. Section 91 Cr.P.C. is wide in its scope. It cannot be restricted to any particular stage. At any stage of a criminal case, but before pronouncing judgment, Section 91 Cr.P.C. can be invoked either by the prosecution or by the defence. But, while doing so, through Section 91 Cr.P.C., the evidence, which is incriminating in nature cannot be unearthed. That question does not arise here because the petition has been filed by the accused themselves.

14. One's right of presumption itself is his basic human right. It can be displaced only by legal evidence. It shall be after a reasonable opportunity to the accused to defend himself effectively. This has also been constitutionally assured in Article 22(1) of the Constitution of India and also in Section 303 Cr.P.C.

15. Right to be defended should not be a mere, name sake defence. It should be effective. If the defence is unable to put up the defence upon not supplied with required documents under Section 207 Cr.P.C., or even on the motion of the accused/defence then the defence will be prejudiced. Those materials can be unearthed (send for) wherever it may be, to enable the accused to put up his defence. It is also one of the objective of Section 91 Cr.P.C.

16. The need, necessity to put up the defence cannot be weighed in a golden scale by the Court. And the prosecution cannot say it is more than sufficient. The defence has to be advised by the accused and not by the prosecution. The accused is in his hour of crisis. They are in a grim situation as then presumption of innocence is sought to be endangered by presenting the prosecution package (See S.173 Cr.P.C. Final Report).

17. Such right of defence is pre-constitutional in nature. Even the U.N.O's Universal Declaration of Human Rights, 1948 (U.D.H.R.) emphasis the right of defence. The right to cross examine includes right to have sufficient materials either supplied under Section 207 Cr.P.C. or brought through Section 91 Cr.P.C. Of course, if the Court discerns any hidden agenda or an attempt to take the Court for a jolly ride, or to trouble the prosecution, or it is an aimless, fruitless missile in the form of Section 91 Cr.P.C. The Court could/should curtain such kind of strategies.

18. Principally, fair trial demands reasonable opportunity to the accused. Only after that, a conviction can be recorded (see Union of India vs. Maneka Gandhi [1978 (1) SCC 248]. It would be quiet unfair to deny such opportunity. It might include send for certain documents which may be necessary for the defence to to put up an effective defence or they may be necessary to test the veracity of the prosecution witnesses. Otherwise, the defence will be prejudiced. Actually, these generalisations are found on the concept of principles of natural justice and fair play in action.

19. So far as, the General Diary is concerned, it need not be send for. But the other documents which are in the Electricity Department, which according to the defence have so much of information to put-forth to probablise the defence version cannot be negatived on the ground that it is not necessary to do so. To do so will be clearly in violation of Articles 21, 22(1) of the Constitution of India and section 303 Cr.P.C. No trial can be conducted by asking the accused to denfend his case by his hands tied and asking him defend his case without necessary documents, which according to him are essential for putting up an effective defence.

20. In view of the foregoings, I disagree with the view taken by the Trial Court.

21. Ordered as under :

(i) The impugned Order of the learned Special Judge/Chief Judicial Magistrate, Tiruvallur passed in C.M.P.No.2120 of 2015, dated 11.04.2016 is set aside.

(ii) The learned Special Judge/Chief Judicial Magistrate, Tiruvallure will send for the documents listed in paragraph 4 of this order from the concerned Department the concerned Department, except the General Diary.

22. Accordingly, this Criminal Original Petition is disposed of.

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