



Crl.R.C.(MD).No.514 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 06.06.2023

Pronounced on : 09.06.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.514 of 2023

and

Crl.M.P.(MD)No.7483 of 2023

Navinkumar

... Petitioner/Accused No.1

Vs.

State represented by
The Inspector of Police,
Pattiveeranpatti Police Station,
Dindigul District.
(Crime No.745 of 2021)

... Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the impugned order dated 21.04.2023 passed in Crl.M.P.No.1005 of 2023 in C.C.No.389 of 2022 on the file of the Principal Special Judge for Narcotic Drugs and Psychotropic Substances Act cases, Madurai and set aside the same and further direct the trial Court to send Ex.P3 and Ex.P7 for the purpose of comparison of the disputed signature of P.W. 4 on Ex.P7 with the admitted signature of P.W.4 on Ex.P3 to Forensic Science Laboratory.



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For Petitioner : Mr.D.Selvam
for Mr.P.Ilaiyarasu

For Respondent : Mr.SS.Madhavan
Government Advocate (Crl. Side)

ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No. 1005 of 2023 in C.C.No.389 of 2022 dated 21.04.2023, on the file of the Principal Special Court for Narcotic Drugs and Psychotropic Substances Act Cases, Madurai.

2. The petitioner is the first accused in C.C.No.389 of 2022 on the file of the Principal Special Court for NDPS Act Cases, Madurai.

3. The case of the prosecution is that on 28.12.2021 at about 10.00 a.m., on the receipt of a secret information, the respondent police party had proceeded to the house of the 3rd accused at East Street Salaiputhur Village, that on seeing the police party, the accused 1 to 3 had tried to escape from that place, but they were surrounded and nabbed by the police, that after searching the house, they have recovered 220kgs of Ganja and a two wheeler under the cover of seizure



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mahazar at about 12.00 hours, that a confession statement was taken from the petitioner, wherein, he had implicated the involvement of the fourth accused that subsequently the fourth accused was arrested and he implicated the involvement of the accused 5 and 6 in his confession and that the respondent police, after completing the investigation, has filed the final report against 6 persons including the petitioner herein for the offences under Sections 8(c) r/w 20(b)(ii) (C), 25 and 29(1) of NDPS Act and the case was taken on file in C.C.No.389 of 2022 on the file of the Principal Special Court for NDPS Act Cases, Madurai.

4. It is not in dispute that the trial has already been commenced and 4 witnesses have been examined as P.W.1 to P.W.4, 23 documents have been exhibited as Ex.P1 to Ex.P23 and 27 material objects have been marked as M.O.1 to M.O.27.

5. It is also not in dispute that during trial, the recovery mahazar under Ex.P3 was marked through P.W.1 which was allegedly prepared by the Inspector of Police-P.W.4, that Ex.P7 mahazar (Athatchi) was marked through P.W.4, that during cross-examination, P.W.4 has admitted that he has affixed his signature in Ex.P7, but subsequently, he disputed the signature found in Ex.P7 stating that the



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signature found therein is not looking like his signature and that he had no objection for sending Ex.P7 to compare with Ex.P3 to an expert for opinion.

6. The petitioner, taking note of the above evidence of P.W.4, has filed a petition under Sections 45 r/w 73 of Evidence Act in Crl.M.P.No.1005 of 2023 in C.C.No.389 of 2022 seeking permission for sending the Ex.P3 and Ex.P7 for the purpose of comparison and for getting of a report. The respondent has raised strong objections alleging that the prosecution is admitting that Ex.P3 and Ex.P7 contains the signature of P.W.4 and they are not disputing about the same, that the signature found in the xerox copy shown to P.W.4 alone was denied by him and that since the said documents were not disputed, the question of sending the documents to expert opinion does not arise at all. The learned Special Judge, after enquiry, has passed the impugned order dated 21.04.2023 dismissing the petition. Aggrieved by the order of dismissal, the first accused has come forward with the present revision.

7. It is the specific case of the prosecution that the contraband of Ganja and a two wheeler were seized from the place of occurrence at about 12.00 hours on 28.12.2021 under the cover of Ex.P3-seizure mahazar and that the said



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mahazar during trial was exhibited through P.W.1. Subsequently, when P.W.4 was in witness box, another mahazar (Athatchi) alleged have been prepared at 12.00 hours on 28.12.2021 was marked as Ex.P7.

8. As already pointed out, in cross-examination P.W.4 would admit that the signature found in Ex.P7 mahazar is his signature, but immediately, he had taken a U-turn and would say that the signature found in the mahazar is not looking like his signature and that he has no objection to send the documents for comparison.

9. As rightly contended by the learned Government Advocate (Criminal Side), just because a witness had disowned his signature in a marked document, that by itself is not a ground to send the documents for comparison to find out as to whether the signature found in the documents in question is that of the person, who denied the same. It is for the trial Court to decide as to whether comparison is to be made and an expert opinion is to be obtained.

10. In the case on hand, even assuming for arguments sake that a report is given stating that the signatures found in Ex.P3 and Ex.P7 are that of P.W.4 or



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different signatures, the said result would not advance the case of the accused further. Moreover, as rightly contended by the learned Government Advocate (Criminal Side), no purpose is going to be served in getting such an expert report. Hence, the decision of the learned Special Judge in rejecting the prayer for sending the documents for comparison to get an expert opinion cannot be found fault with.

11. But at the same time, the learned counsel appearing for the petitioner would strongly contend that the learned Special Judge has given his findings contrary to the admitted facts. He would further submit that the trial Court has erroneously stated in the impugned order that P.W.4 replied that the copy of the Ex.P7 was not enclosed and as such he makes it clear that he has not been contradicted with Ex.P7 document and the document shown to him was not produced before this Court and that the above observation made by the trial Court has greatly prejudiced the petitioner.

12. At this juncture, it is necessary to refer the relevant passage in the impugned order and the same is extracted hereunder:-



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“5. ...

.....

(iv) *As the respondent has disputed calim of the petitioner that P.W.4 has denied his signature found in Ex.P.7, as he denied the signature found in a Xerox copy of document shown to him by the learned counsel for the petitioner during cross examination, we have to consider this objection. The learned counsel for the petitioner relies on the following portion of cross examination of P.W.4* □*என்னிடம் காட்டப்படும் அத்தாட்சி என்ற ஆவணத்தில் உள்ள கையெழுத்து என்னுடையது தான். சாட்சி தற்போது ஆவணத்தை பார்த்துவிட்டு என் கையெழுத்து மாதிரி தெரியவரவில்லை என்று சாட்சியம் அளிக்கிறார். இந்த ஆவணத்தில் உள்ளது என்னுடைய கையெழுத்து தான் என்று பரிசோதனைக்கு அனுப்ப எனக்கு ஆட்சேபனை இல்லை*□. *But, further perusal of cross examination of P.W.4 this court finds that the learned counsel for the petitioner/A1 put a specific question and got the following from the P.W.4 -* □*இந்த ஆவணத்தின் நகலை நான் இணைக்கவில்லை*□*this portion of evidence of P.W.4 makes it clear that he has not been contradicted with the Ex.P7 document and the document shown to him is not produced before this court. Hence, as contended by the learned special Public prosecutor when the signature found in Ex.P.7 is not shown to P.W.4 and he has not denied his signature in Ex.P.7, the question of subjecting the signature found in Ex.P.7 by hand writing expert.”*



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13. The learned Government Advocate (Criminal Side) appearing for the respondent would fairly admit that the prosecution has produced and exhibited Ex.P7 through P.W.4 and when Ex.P7 was shown to P.W.4, though initially he admitted his signature, but immediately he had disputed his signature and expressed his readiness to send the documents for comparison.

14. It is not in evidence that xerox copy of Ex.P7 was shown to P.W.4 during his cross-examination. Even assuming for arguments sake that a xerox copy was shown to him, being the investigating officer he should have asked the defence counsel or the Court for showing the original of Ex.P7.

15. Considering the above, the observation of the learned Special Judge that P.W.4 has not been contradicted with the Ex.P7 document and the document shown to him was not produced before this Court is not proper and is very much against the evidence available on record.

16. The learned counsel appearing for the petitioner would submit that the trial Court, without giving proper and sufficient opportunity for the petitioner to



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proceed further, has passed an order on 30.05.2023 posting the case for judgment by 12.06.2023 and all the parties were directed to file their written argument on or before 07.06.2023.

17. No doubt, this Court has already issued a direction to the trial Court to dispose of the case on or before 21.04.2023. It is not known as to whether any requisition for extension was made or any time extension was granted by this Court. Whatever it is, now the case stands posted for arguments.

18. Since the petitioner's prayer for sending the documents to expert for comparison and report has been negatived, the trial Court is at liberty to proceed with the hearing of the arguments and for pronouncement of judgment. Hence, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

19. In the result, this Criminal Revision case is dismissed. However, the petitioner and the other co-accused are permitted to advance their arguments within a period of one week from the date of receipt of copy of this order and the learned trial Judge is directed to dispose of the case in C.C.No.389 of 2022,



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uninfluenced by any observation made by him in the impugned order within a period of two weeks thereafter. Consequently, connected miscellaneous petition is closed.

09.06.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

- 1.The Additional District Judge,
Principal Special Court for NDPS Act Cases,
Madurai.
- 2.The Inspector of Police,
Pattiveeranpatti Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in
Crl.R.C.(MD)No.514 of 2023
and
Crl.M.P.(MD)No.7483 of 2023

Dated : 09.06.2023