

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 6.11.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.R.C.No.1060 of 2015

1.Andasu Ravinder
2.Kavitha Andasu

.... Petitioners

vs.

1.The State, rep.by
The Superintendent of Police,
SPE/CBI/ACB/Chennai

2.Badhe Anantha Chaitanya

.... Respondents

Prayer:- Criminal revision case filed under Section 397 read with 401 Cr.P.C., to set aside the order in Crl.M.P.No.2082 of 2015 in C.C.No.5 of 2015, on the file of the XII Additional Special Judge for CBI Cases, Chennai.

For Petitioners :Mr.V.Krishnamoorthy

For Respondents :Mr.K.Srinivasan,
Spl Public Prosecutor,CBI
for R1
Ms.A.Maheswari for R2

ORDER

This criminal revision case has been directed against the order dated 6.8.2015, passed in Crl.M.P.No.2082 of 2015, in Calendar Case No.5 of 2015, by the XII Additional Special Judge for CBI cases, Chennai.

2. The second respondent herein has been shown as fourth accused in Calendar Case No.5 of 2015. During pendency of the same, as petitioner, he has filed Crl.M.P.No.2082 of 2015 under Section 306 of the Code of Criminal Procedure, 1973, praying to give tender of pardon to him. The Court below, after considering the divergent contentions raised on either side, has allowed the petition filed in Crl.M.P.No.2082 of 2015, in C.C.No.5 of 2015 and thereby pardoned him. Against the order

passed by the Court below, the present criminal revision case has been filed, at the instance of accused 1 and 2, found in Calendar Case No.5 of 2015.

3. The learned counsel appearing for the revision petitioners has meticulously contended that the revision petitioners have been arrayed as accused Nos.1 and 2 in Calendar Case No.5 of 2015 and the petitioner in Crl.M.P.No.2082 of 2015 has been arrayed as fourth accused. During pendency of the same, the fourth accused has given a statement under Section 164 of the Code of Criminal Procedure, 1973 and subsequently, he has filed the present petition in Criminal M.P.No.2082 of 2015 under Section 306 of the said Code. The Court below has completely relied upon the statement given by the fourth accused, under Section 164 of the said Code, but at the foot of the statement, the concerned Magistrate has not given necessary certificate and due to that, the entire statement, recorded under Section 164 of the said Code, is not legally valid and therefore, the Court below is not entitled to rely upon the said statement. Since the Court below has fully relied upon the statement, recorded under Section 164 of the said Code, the order passed in Crl.M.P.No.2082 of 2015 is also illegal and the same is liable to be set aside.

4. The learned Special Public Prosecutor appearing for the first respondent has contended that even though a lapse is found on the part of the Magistrate, who recorded a statement under Section 164 of the Code of Criminal Procedure, 1973, and as per Section 463 of the said Code, the said lapse can be ignored and further, the Court below has considered the point raised on the side of the revision petitioners and ultimately ignored the same and thereby the order passed by the Court below in Crl.M.P.No.2082 of 2015 is perfectly correct and the same does not call for any interference.

5. For considering the divergent submissions made on either side, the Court has to look into the following Sections:-

In Section 164(4) of the Code of Criminal Procedure, 1973, it is stated like thus:

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:-

" I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and

admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.
Magistrate".

6. On a mere reading of the said provision, it is made clear that after recording a confession statement under the said Section, the certificate mentioned therein is mandatory.

7. In the instant case, even as per the observation made in the order passed by the Court below, no certificate of the Magistrate is found in the statement recorded under section 164 of the said Code, from the fourth accused.

8. Section 463 of the said Code deals with non-compliance with the provision of Section 164 or Section 281.

9. In the opening of Section it is stated that if any Court before which a confession or other statement of an accused person recorded, or purporting to be recorded under Section 164 or Section 281, is tendered, or has been received, in evidence finds that any of the provisions of either of such Sections have not been complied with by the Magistrate.

10. It is an admitted fact that before recording a statement under section 164 of the said Code, certain formalities have to be observed, as mentioned therein. If there is any deviation in observing such formalities, the same would not vitiate the statement recorded under Section 164(4) of the said Code, by virtue of Section 463. Therefore, in the instant case, Section 463 of the said Code cannot be invited.

11. Now the Court has to look into the contention put forth on the side of the revision petitioners. The only contention put forth on the side of the revision petitioners is that as per Section 164(4) of the said Code, after recording a statement from the concerned accused, the concerned Magistrate has to give necessary certificate at the foot of the statement. But, in the instant case, after recording a statement under section 164 of the said Code from the fourth accused, the concerned Magistrate has not given such kind of certificate and the Court below, in CrI.M.P.No.2082 of 2015, has completely relied upon the said statement and thereby, the order passed by the Court below is illegal.

12. In fact, this Court has perused the order passed in CrI.M.P.No.2082 of 2015, by the Court below, wherein, predominantly, the statement recorded under Section 164 of the said Code, from the fourth accused, is relied upon. Since the statement recorded under Section 164 of the said Code from fourth accused itself is illegal for want of certificate, the Court below, in the order passed in CrI.M.P.No.2082 of 2015,

cannot rely upon the same. Since the Court below has completely relied upon the statement recorded, under Section 164 of the said Code, from the fourth accused, it is needless to say that the order passed in Crl.M.P.No.2082 of 2015 is also equally illegal and the same is not sustainable.

13. The learned counsel appearing for the revision petitioners has drawn the attention of this Court to the decision reported in Murugan vs. State (2006 Crl L.J.1085), wherein, the Division Bench of this Court has held that certificate/memorandum, at the foot of the statement recorded under Section 164 of the Code of Criminal Procedure, 1973, is mandatory. Non-compliance of the same would lead to rejection of confession statement.

14. In the instant case, as stated in many places, the statement recorded under section 164 of the Code, from the fourth accused, is not in accordance with law and the same cannot be relied upon. But, inspite of the defect attached to the said statement, the Court below, in the impugned order, has completely followed the same. Therefore, the order passed by the Court below is liable to be set aside.

15. In fine, this criminal revision case is allowed. The order passed, in Crl.M.P.No.2082 of 2015 in Calendar Case No.5 of 2015 by the XII Additional Special Judge for CBI cases, Chennai, is set aside. The petition filed in Crl.M.P.No.2082 of 2015 is dismissed. However, the fourth accused is given liberty to file similar application and the Court below is directed to invoke Section 306 of the Criminal Procedure Code independently without looking into the statement recorded under section 164 of the Code of Criminal Procedure, 1973, from the fourth accused.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

msk

To

1.

The Superintendent of Police,
SPE/CBI/ACB/Chennai

2.The XII Additional Special Judge for CBI Cases,
at Chennai.

3 The Public Prosecutor,
High Court, Madras.

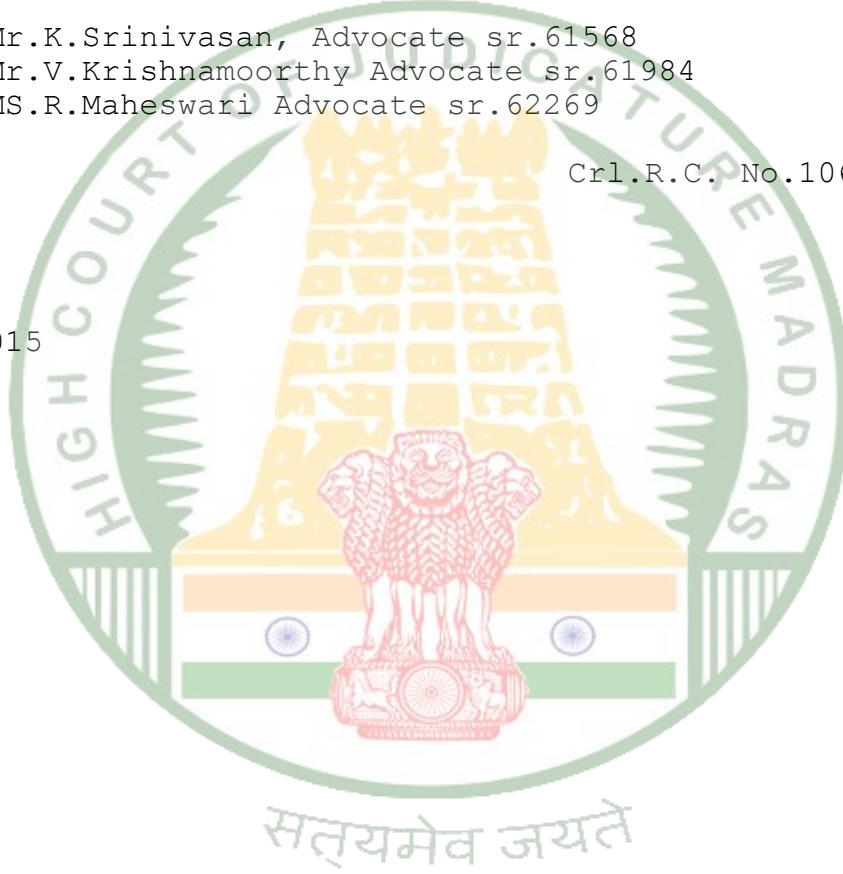
+1 cc to Mr.K.Srinivasan, Advocate sr.61568

+1 cc to Mr.V.Krishnamoorthy Advocate sr.61984

+1 cc to MS.R.Maheswari Advocate sr.62269

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