

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.246 Of 2015
and M.P.No.1 of 2015

S.Govindaraj

.. Petitioner

Vs

State rep. by
The Inspector of Police,
B-1, North Beach Police Station,
Chennai - 600 001

.. Respondent

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to set aside the order passed by the learned VII Metropolitan Magistrate in Crl.M.P.No.Un numbered of 2014 dated 13.03.2015 in C.C.No.2402 of 2014.

For Petitioner : Mr.M.Krishnamoorthy

For Respondents : Mr.P.Govindarajan (for R2)
Additional Public Prosecutor

O R D E R

Being aggrieved by the order dated 13.03.2015 made in Crl.M.P.No.Un numbered of 2014 in C.C.No.2402 of 2014 on the file of the learned learned VII Metropolitan Magistrate, Chennai, the present criminal revision case, is filed.

2. Material on record discloses that the petitioner has been arrayed as A4 in C.C.No.2402 of 2014 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai, for the offences under Sections 408, 420 and 120-B, r/w Section 34 of IPC. During cross examination of PW1, prosecution has submitted a list of 29 documents and sought for permission to mark the documents, on the prosecution side.

3. Counter affidavit has been filed on behalf of the 4th respondent therein, opposing the prayer on the grounds inter alia that the investigating agency has not mentioned the abovesaid documents, on the earlier occasion and none of the witnesses sought

to be examined, speak about the additional 29 documents sought to be marked. Contention has also been raised that prosecution could only rely on the documents collected during investigation. Respondent before the Court below has also contended that the attempt to mark the documents was nothing to fill up the lacuna in the prosecution case. Adverting to the above submission of both sides, on 13.03.2015, the learned VII Metropolitan Magistrate, Chennai has passed the following orders.

"A4 absent, A5 absent, 317 filed & allowed, other present. Heard perused considered. The prosecution filed the petition u/s.242(2) Cr.P.C., for marking of certain documents and learned APP urged that, the marking of the mentioned documents are vital to conduct the successful prosecution. The Accused in their counter strongly objected by arguing that it would cause prejudice to them considering the facts and circumstance and upon hearing both side this Court observed that, No prejudice will be caused in marking those documents mentioned by the prosecution. Hence petition allowed for trial call on 23.03.2015".

4. Though, Mr.M.Krishnamoorthy, learned counsel for the petitioner assailed the correctness of the order dated 13.03.2015 in CrI.M.P.No.Un numbered of 2014 in C.C.No.2402 of 2014 on the file of the learned VII Metropolitan Magistrate, Chennai, reiterating the very same grounds, this Court is not inclined to accept the said contentions. Furthermore, during the course of hearing this revision petition, learned counsel for the petitioner submitted that the abovesaid documents had already been marked on 23.03.2015, through PW1.

5. Section 242 of the Code of Criminal Procedure, 1973 states as follows:

242.Evidence for prosecution.-

(1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 241, the Magistrate shall fix a date for the examination of witnesses.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of

the prosecution:

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

6. Section 243 of the Code deals with Evidence for defence and it reads thus;

243.Evidence for defence.-

(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable incurred by the witness in attending for the purposes of the trial be deposited in Court.

B.- Cases instituted otherwise than on police report"

7. Though, Mr.M.Krishnamoorthy, learned counsel for the petitioner further submitted that the abovesaid documents have not been collected during investigation by the police, but in order fill up the lacuna in the investigation, police has marked the documents through PW1 and further contended that the documents were not in possession of the police, it is always open to the petitioner to cross-examine the witnesses and if there is any lacuna in the

investigation, the accused can always raise it as a defence, at the time of adjudication of the offences, charged against them.

8. The prosecution should be free to examine all such witnesses, as may be required, whether or not, their statements were recorded by the Police, during investigation, under Section 161 of the Code and whether or not their names were included in the list of witnesses, which the police had submitted along with the charge sheet to the Court. Prosecution should not be prevented from examining a person as a witness, who has not been examined by the Police, during investigation.

9. On the contention of the learned counsel for the petitioner that the documents attempted to be marked are not the part of the investigation and filing of final report, before examining the witnesses, the Court is bound to furnish the copies of the same and in such circumstances, the petitioner has got an opportunity to cross-examine the witnesses, in which event, no serious prejudice would be caused to the petitioner. If examination of witnesses and marking of documents is vital to prosecution, it cannot be shut down.

10. When Section 242 (2) of the Code enables the prosecution to adduce the evidence, it cannot be said that there is any material irregularity in permitting the prosecution in marking the documents. Further, the order dated 13.03.2015, made in CrI.M.P.No.Un numbered of 2014 in C.C.No.2402 of 2014 has already been effected by marking the documents on 23.03.2015 by PW1.

11. In the light of the above, this Court is not inclined to interfere with the impugned order. The Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The VII Metropolitan Magistrate,
George Town, Chennai.

1.a The Chief Metropolitan Magistrate, Egmore, Chennai -8.

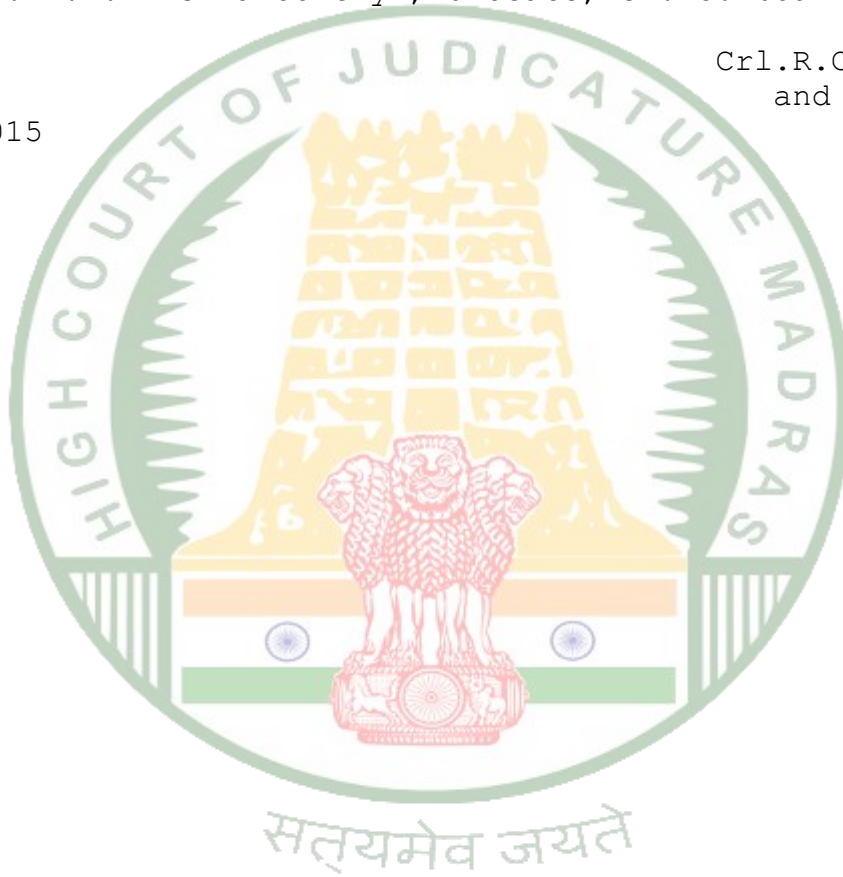
2. The Inspector of Police,
B-1, North Beach Police Station,
Chennai - 600 001

3. The Public Prosecutor,
High Court, Madras.

1 cc to Mr.Mr.M.Krishnamoorthy ,Advocate, SR.No.16892

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pmk.6.4.2015



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