

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2015

CORAM:

THE HON'BLE MR.JUSTICE B. RAJENDRAN

CRL. R.C. No. 703 of 2015

Rana @ Rajendran

.. Petitioner/Defacto Complainant.

Versus

1. State rep. by
Inspector of Police
Nallipalyam Police Station
Cr.No.247 of 2011.

2. Suresh

3. G.P.Varatharaj

4. K.Sellamuthu

5. M.Dinnakaran

6. N.Jothivel

7. R.Pandi

8. S.Gunasekaran

9. K.Samynathan

.. Respondents/Accused.

Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code, against the order passed by the learned Additional Assistant Sessions Judge (Trainee District Judge), Namakkal, made in C.M.P.No.4 of 2015 in S.C.No.63 of 2013, pending trial, dated 06.04.2015.

For Petitioner : Mr. C.D.Johnson

For Respondents : Mr. V.Arul
Government Advocate (Crl.Side)
for R.1

No Appearance for R.2 to R.9

ORDER

This Criminal Revision Case has been filed by the defacto complainant aggrieved against the dismissal of the petition in C.M.P.No.4 of 2015 in S.C.No.63 of 2013 filed under Sections 173(2), (5) and (8) of Cr.P.C. by the prosecution before the learned Additional Assistant Sessions Judge, Trainee District Judge, Namakkal, during the course of trial, to permit the prosecution to file the additional documents. The Additional Assistant Sessions Judge, by order dated 06.04.2015, dismissed the said petition. Aggrieved against the same, the present Criminal Revision Case is filed by the defacto complainant.

2. Today, when the matter is taken up, Mr.C.D.Johnson, learned counsel appearing for the petitioner/defacto complainant would submit that it is a case in counter. The additional documents, which are now sought to be received as additional documents, are the certified true xerox copy of I.A.No.159 of 2011 in O.S.No.50 of 2011 and photos with negative, which would clearly establish in respect of the previous motive and trespass committed by the accused. Unless, the additional documents are permitted to be marked the grave nature of the offence could not be proved. In fact, that is why the prosecution themselves have moved the petition before the Trial Court; when the said petition was dismissed by the Trial Court, they ought to have filed a revision, but, the prosecution has not filed a revision, hence, the defacto complainant has come forward with the revision.

3. Mr.V.Arul, learned Government Advocate appearing for the first respondent would confine his arguments to the effect that the additional documents, which are now sought to be received as additional documents, were very much available with them in their C.D. file during investigation itself, but, due to oversight by the Investigating Officer, those documents, which are material documents for the prosecution, have not been marked at the earliest point of time and therefore, now the prosecution may be permitted to file the additional documents and in such an event, the right to cross-examination by the otherside is enough and no further investigation is necessary, as these are documents, which will only safeguard the interest of parties.

4. Even though, notice was served on respondents 2 to 9/accused, they have not chosen to appear neither in person nor represented through any counsel and hence, their names were printed in the cause list. Even today, when the matter is taken up, there is no representation for the accused. The Hon'ble Apex Court in the judgment reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, has culled out certain principles and has ultimately held that the Court can decide the matter even in the absence of accused or his counsel, but, only criteria is that the case should be decided on merits in the absence of the accused. In

the light of the decision cited supra, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned counsel appearing for the petitioner/defacto complainant and learned Government Advocate appearing for the first respondent and also after perusing the materials available on record.

5. No doubt, the Trial Court has taken into consideration that further investigation cannot be ordered as almost the investigation is over and chargesheet was filed and the case was ripe for trial and therefore, insofar as further investigation is concerned, the order of the Trial Court is correct. Insofar as to the production of additional documents and marking of the same is concerned, if a new document is produced naturally further investigation is required, but, as admitted by the defacto complainant as well as the prosecution, these are all documents, which were very much available with the prosecution in their C.D. file during investigation itself, but, due to oversight by the Investigating Officer, those documents, which are material documents for the prosecution, have not been marked at the earliest point of time. Infact, it is categorically admitted by the Investigation Officer that these documents were in their possession during investigation itself, but, they were not marked due to oversight, therefore, they have come forward with the petition. Therefore, when the documents were already available in the C.D. file and it was failed to be produced and marked due to oversight, in my considered opinion, there need not be any further investigation and if an opportunity is provided to otherside to cross-examine it is enough. Section 173(8) Cr.P.C., itself provides for such eventuality. The documents, which are now sought to be produced as additional documents, can be marked through the Investigation Officer and rightly, the prosecution has come forward with the petition before the Trial Court, but, the same was dismissed. For the foregoing discussions held, this Criminal Revision Case is partly allowed to the limited extent directing the prosecution to mark the additional documents viz., certified true xerox copy of I.A.No.159 of 2011 in O.S.No.50 of 2011 and photos with negative and marking of the same through the Investigation Officer, before the Trial Court in S.C.No.63 of 2013 and the Trial Court shall afford an opportunity to otherside for cross-examination. In all other respects, the order of the Trial Court stands confirmed.

paa

-s/d-

Assistant Registrar(AS)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate,
Namakkal.
 2. -do- thro' The Chief Judicial Magistrate,
Namakkal.
 3. The Additional Assistant Sessions Judge
(Trainee District Judge),
Namakkal.
 4. -do- thro' The Principal Sessions Judge,
Namakkal.
 5. The Inspector of Police,
Nallipalayam Police Station,
Namakkal District.
 6. The Public Prosecutor,
High Court, Madras.
- + 1 cc to Mr.C.D.Johnson, Advocate SR 48011

skv(co)
prk9/9

CRL.R.C.No. 703 of 2015



WEB COPY