

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.07.2015

DELIVERED ON : 27.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.17884 of 2015
and M.P.No.1 of 2015

Tamilvanan @ Raju ... Petitioner/Accused
Vs

The State: rep by
Inspector of Police
Barur Police Station
Dharmapuri District. ... Respondent/Complainant.

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the impugned order passed in Crl.M.P.No.39 of 2015 in S.C.No.109 of 2010 dated 10.07.2015 on the file of Additional District Court, Krishnagiri.

For Petitioner	Mr.R.Sankarasubbu
For Respondent	Mr.C.Emalias, Addl.Public Prosecutor

O R D E R

This petition has been filed to set aside the impugned order passed in Crl.M.P.No.39 of 2015 in S.C.No.109 of 2010 dated 10.07.2015 on the file of Additional District Court, Krishnagiri.

2. It is the case of the prosecution that this petitioner and three others were members of Communist Party [Marxist-Leninist] and in furtherance of their political philosophy, they entered into a criminal conspiracy to commit the murder of one Dharmalingam Chettiar, landlord and money lender, pursuant to which the said Dharmalingam Chettiar was murdered on 08.02.1973. In respect of this incident, the respondent police registered a case in Cr.No.31 of 1973 and after completing the investigation, filed a Final Report under Sections 120B, 302 and 109 IPC against 5 persons, including the petitioner herein, of whom one of them by name Venkatachalam, was treated as an approver. The Final Report was taken on file as PRC No.20 of 1974 by the learned Judicial Second Class Magistrate, Uthangarai. This petitioner was in abscondance since 1974. Therefore, the case against this petitioner was split up and the case

in respect of the other accused was committed to the Court of Sessions and it appears that, the other accused were convicted and sentenced in accordance with law. This petitioner was arrested only in the year 2009, and after he was in jail for about two years, he was granted bail.

[i] The case that was split up against this petitioner was committed to the Court of Sessions and when the trial before the learned Additional District and Sessions Judge, Krishnagiri was about to commence in S.C.No.109 of 2010, this petitioner filed CrI.M.P.No.39 of 2015 for two prayers:

[a] for a direction to the Court to furnish Tamil translation of pages 34 to 56 of the documents accompanying the Final Report; and

[b] for the examination of the approver by the Committal Magistrate in terms of Section 306(4)(a) of the Code of Criminal Procedure.

[ii] The Sessions Judge by a well considered order, dismissed CrI.M.P.No.39 of 2015 with costs of Rs.25,000/-, as the trial Court found that this petitioner has been doing everything possible within his means for protracting the trial. Challenging the order dated 10.07.2015, the petitioner/accused has approached this Court in this petition.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

4. As regards relief [a], Mr.Sankarasubbu, learned counsel submitted that, the accused has got a fundamental right to have the copies of documents translated into Tamil, which is a language known to him and therefore, the order of the trial Judge deserves to be set aside. It should be remembered that the petitioner is not facing any preventive detention proceedings, to have all the copies of the records relied upon by the Detaining Authority translated into the language known to the detenu. In this case, most of the records are in Tamil and only some of the Reports of the Experts and a few other records are in English. The records by themselves are not substantive piece of evidence. The records have to be proved by witnesses who are going to get into the witness box and give evidence in Tamil. That apart, the issue, whether the accused would be entitled to translated copies under Section 207 Cr.P.C. has been settled by three judgments of this Court namely:

- [1] Arputharaj v. State [1998 (1) LW CrI. 379];
- [2] K.Natarajan v. State by the Inspector of Police [2000 (2) LW CrI. 895];
- [3] K.S.Kumar and another v. State [2006 CrI.LJ 2309].

5. In K.S.Kumar's case, a learned single Judge of this Court has held as follows:

"14. It is not as if the petitioners are transacting with the Court only in Tamil language. The petition itself has been filed in the language of English by the petitioner seeking copies of documents in Tamil version. They are not in judicial custody cut off from the normal life. They have engaged lawyers well versed in the language of English. Section 207 of the Code of Criminal Procedure contemplates furnishing of copies of the statements recorded and documents collected and not translated copies of such statements and documents. Further, if any error is committed by inadvertence in the translation, that will definitely be made as an issue by the accused with a view to elongate the process of trial. The petitioners, who have engaged competent lawyers, can seek their guidance with regard to the statements and documents in English. If necessary, the petitioners can go in for translation of those documents at their own cost for the purpose of better understanding of the course of trial."

6. The petitioner never complained during the committal proceedings and even thereafter, and now when the trial is about to begin, he is taking up a stand that translated versions of pages 34 to 56 should be furnished to him. The fact remains that, the petitioner is defended by a competent lawyer who is very conversant in English. Hence, the relief [a] claimed by the petitioner has been rightly rejected by the trial Court.

7. Coming to relief [b], the approver was examined before the trial Court on 30.12.1974 in terms of Section 306(4) Cr.P.C. Mr.Sankarasubbu, learned counsel placed reliance upon the judgment of the Supreme Court and judgment of Kerala High Court in support of his contention that it is essential for examining the approver before the committal Court. This Court has no quarrel with the aforesaid proposition. In this case, as observed earlier, the petitioner was in abscondance and therefore, the case against him was split up by the Magistrate and before committing the case to the Court of Sessions, the approver was examined before the committal Court on 30.12.1974. Section 306(4) Cr.P.C. does not say that every time the approver should be examined as and when the absconding accused are arrested in a case. Mr.Sankarasubbu, learned counsel for the petitioner submitted that, the petitioner has got a right to cross examine the approver before the Committal Court. In the considered opinion of this Court, this issue is no more res integra in view of the judgment of the Supreme Court in Ranadhir Basu vs. State of West Bengal [2000 AIR SCW 499] wherein, the Hon'ble Supreme Court has held that the accused has no right to cross examine the approver before the Committal Court. Therefore, the sessions Judge was right in denying relief [b].

8. Coming to the question of costs of Rs.25,000/- awarded by the Sessions Court, explanation (2) to Section 309 Cr.P.C. reads as follows:

"The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payments of costs by the prosecution or the accused."

Therefore, the trial Court cannot be found fault for having imposed cost. However, this Court is of the view that the sum of Rs.25,000/- is very high and it will serve the interest of justice, if the cost aspect is deleted and accordingly, that portion of the order awarding cost of Rs.25,000/- is hereby set aside.

9. The Hon'ble Supreme Court in State of Uttar Pradesh v. Shambhu Nath Singh [JT 2001 (4) SC 319] has held that, if the accused protracts the trial, he can be remanded to custody by the trial Court. Therefore, it is open to the trial Judge to cancel the bail of the petitioner and remand him to custody, if he adopts dilatory tactics to prolong the trial.

In the result, there is no merit in this petition and accordingly the same is dismissed with the above modification with regard to costs. Consequently, connected miscellaneous petition is closed.

gms

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Inspector of Police
Barur Police Station
Dharmapuri District.

2.Additional District Judge,
Krishnagiri.

3.The Public Prosecutor
High Court, Madras.

+ 1 cc to Mr.R.Sankarasubbu, Advocate SR 38369

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