

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2015

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P.No.20259 of 2015

and M.P.No.1 of 2015

K.G.Pragadeeshkumar

... Petitioner

Vs.

1.Viswanathan K.

2.Ravishankar V.

3.Pattabiraman

4.State by the
Inspector of Police,
District Crime Branch,
Erode.
Crime No.24 of 2010

.... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Cr.P.C., praying to set aside the order in CMP No.628/2015 in C.C.No.55 of 2014, dated 21.07.2015 on the file of the learned Chief Judicial Magistrate, Tirupur to permit the petitioner to examine and recall himself and mark two material documents in the interest of justice.

For Petitioner : Mr.R.Vijayakumar

For Respondents: Mr.M.Guruprasad &
Mr.D.Lakshmipathy [for R1 & R2]
Mr.C.Emalias [for R4]
Additional Public Prosecutor

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O R D E R

This Criminal Original Petition has been filed praying to set aside the order in CMP No.628/2015 in C.C.No.55 of 2014, dated 21.07.2015 on the file of the learned Chief Judicial Magistrate, Tirupur to permit the petitioner to examine and recall himself and mark two material documents in the interest of justice.

2. It is the case of the prosecution that accused herein are running a Company in the name of M/s.Sri Sankar & Co., which

shares godown, in which turmeric collected from farmers will be stored and they will be despatched to the local market for sale. In this regard, the defacto-complainant, who is a farmer had entrusted turmeric with the accused herein to be kept in the godown from 1999 to 2005. It is alleged by the defacto-complainant that during this period the accused had failed to account for turmeric, valued at Rs.75,00,000/- .

3. On a complaint lodged by the defacto-complainant, the respondent Police registered a case under the Sections 420, 409 I.P.C., and after completing the investigation, filed a final report against the accused in C.C. No.782 of 2010 for the offences under Sections 420, 490 IPC., before the Judicial Magistrate No.III, Erode. Now the case is pending on the file of learned Chief Judicial Magistrate, Tiruppur in C.C.No.55 of 2015. The prosecution examined all the witnesses and the case was posted for examination of the accused under Section 313 Cr.P.C., At that juncture, the defacto-complainant filed a petition in C.M.P.No.628 of 2015 under Section 311 Cr.P.C., for marking two documents, namely a receipt dated 25.04.1987 and the deposition of one of the accused in O.S.No.197 of 2010, that is pending on the file of the learned II Additional Sub Judge, Erode. The Trial Court dismissed C.M.P.No.628 of 2015 by order dated 21.07.2015, challenging which the defacto-complainant/petitioner is before this Court.

4. Heard Mr.R.Vijayakumar, the learned counsel for the petitioner; Mr.M.Guruprasad and Mr.D.Lakshmipathy for respondents 1 and 2 and Mr.C.Emalias, the learned Additional Public Prosecutor for the fourth respondent.

5.Mr.R.Vijayakumar, the learned counsel appearing for the petitioner submitted that the accused had taken a defence in the Trial Court that, they had no business dealings with the defacto-complainant and that they have denied the entire transactions. In order to disprove this, the defacto-complainant is seeking to mark the aforesaid two documents.

6. In support of his contentions, the learned Senior Counsel relied upon the judgment of Supreme Court in Basant Singh V. Janki Singh and Others reported in AIR 1967 SC 341 and Seth Ramdayal Jat Vs. Laxmi Prasad reported in (2009) 11 Supreme Court Cases 545.

7. This Court has no quarrel with the aforesaid proposition that, an admission by a party is relevant against the maker, but the question is at what stage? Under Section 311 Cr.P.C., the Court can permit the parties to adduce relevant evidence at any time before the judgment is delivered. In this case, it is to be seen whether the documents called for by the defacto-complainant, would in any manner cause prejudice to the case of the accused. Admittedly, in a Criminal case, the accused can take conflicting defences.

8.The Police after completing the investigation under Chapter 12 of Cr.P.C., filed a final report against the accused way back in the year 2010, collecting incriminating materials against them. During the pendency of the criminal prosecution, one of the accused has filed a suit in O.S.No.197 of 2010 before the II Additional Sub Court, Erode against the defacto-complainant, in which he is supposed to have made an admission. The said receipt, which is of the year 1987, was available to the defacto-complainant, even when the prosecution was launched. That apart, the prosecution is in respect of the period from 1999 to 2005, whereas the receipt is of the year 1987. Here the accused were furnished with the final report and other documents under Section 207 Cr.P.C., way back in the year 2010 and at the instance of the defacto-complainant, the case was transferred from one Court to another and it was prolonged till 2015. Now at the fag end of the Trial, the attempt by the defacto-complainant to produce the aforesaid documents would indeed be prejudicial to the case of the accused and it would tantamount to filling up the lacuna. Therefore, in the opinion of this Court, the Trial Court has rightly rejected the petition.

9. Whatever is observed above, is only for the limited extent of deciding this quash petition and the Trial Court shall proceed with the trial without being influenced by what is stated above.

10.In the result, this petition is devoid of merits and hereby dismissed. Consequently connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ds

To:

1.The Inspector of Police,
District Crime Branch,
Erode (Crime No.24/2010)

2.The Chief Judicial Magistrate
Tirupur

3.The Public Prosecutor,
High Court, Madras.

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+1 cc to Mr.R.Vijayakumar, Advocate sr.46697
+1 cc to Mr.M.GuruPrasad, Advocate sr.46563

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