

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27-8-2015

Pronounced on : -9-2015

CORAM:

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

Crl.O.P.No.2150 of 2015 & M.P.No.1 of 2015
Crl.O.P.No.21006 of 2015 & M.P.No.1 of 2015

Crl.O.P.No.2150 of 2015

Tamilvanan @ Vanan .. Petitioner in both petitions

Vs.

The State, rep.by
Inspector of Police,
CBCID Crime Branch
Barur Police Station,
Dharmapuri District
(Crime No.31 of 1973)

.. Respondent in both petitions

PRAYER in Crl.O.P.2150/2015: Criminal Original Petition filed under Section 407 of Code of Criminal Procedure with a prayer to transfer the sessions case in S.C.No.109 of 2010 pending on the file of Additional Sessions Judge, Krishnagiri to the Court of Sessions Judge, Dharmapuri to secure the ends of justice.

PRAYER in Crl.O.P.No.21006/2015: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records and quash the committal order passed in P.R.C.No.4 of 2010 dated 5.8.2010 on the file of the District Munsif-cum-Judicial Magistrate, Pochampalli, to secure the ends of justice.

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

O R D E R

Crl.O.P.No.2150 of 2015 is filed under Section 407 of Code of Criminal Procedure seeking to transfer the sessions case in S.C.No.109 of 2010 pending on the file of Additional Sessions Judge, Krishnagiri, to the Court of Sessions Judge, Dharmapuri.

2. Crl.O.P.No.21006 of 2015 is filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records and quash the committal order passed in P.R.C.No.4 of 2010 dated 5.8.2010 on the file of the District Munsif-cum-Judicial Magistrate, Pochampalli.

3. This is the second round of litigation before this Court by the petitioner herein on the same subject matter. Earlier this petitioner filed Crl.O.P.No.17884 of 2015 in which this Court passed a detailed order narrating the facts and circumstances of the case. Instead of narrating the entire facts once again, it will suffice, if the earlier order in Crl.O.P.No.17884 of 2015 dated 27.7.2015 is extracted verbatim as it contains the concatenation of the events in a chronological manner.

"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. सत्यमेव जयते

[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 Crl.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."

4. Mr.R.Sankarasubbu, learned counsel appearing for the petitioner submitted that the petitioner has not been furnished with legible copies of the police statements and other records under Section 207 of Cr.P.C. He produced a bunch of papers in support of this contention and requested this Court to peruse the same. What was produced before this Court was not the actual papers that were furnished to the accused, but photo copies of it, and therefore this Court cannot come to the conclusion that illegible copies of the documents have been furnished to the accused. It is seen that the accused was furnished with the papers under section 207 Cr.P.C. by the Committal Court viz., Judicial Magistrate Court, Pochampalli, on 5.8.2010 and at that time he did not raise any objection that the documents that are furnished to him are not legible. Only when the case was posted for trial, the accused has come up with the plea that the copies furnished to him are illegible. However, on the directions of the trial Court, the accused was furnished with typed copies of the statements of Venkatachalam @ Govindan, Approver; Krishnan; Sadasivam Chettiar; and certain others.

5. The learned Additional Public Prosecutor submitted that out of 58 witnesses cited in the final report, 39 witnesses died and there are only 19 witnesses, and that, the prosecution is ready to

furnish the typed copies of the police statements of those 19 witnesses to the accused. Taking into consideration the conduct of the accused in not protesting at the time when the copies were furnished to him on 5.8.2010, and thereafter complaining now that the copies are illegible, this Court is unable to accede to the request of Mr.R.Sankarasubbu to furnish all the documents to the accused afresh. However, the prosecution have agreed to furnish typed copies of the statements of 19 witnesses, which may be complied with.

6. Mr.R.Sankarasubbu further submitted that the petitioner should be given Tamil translated copies of all the documents. In support of his contention he relied upon a judgment of the learned single Judge of this Court. This plea was also rejected in CrI.O.P.No.17884 of 2015 and therefore it cannot be reopened.

7. Mr.R.Sankarasubbu relied upon the judgment of a Division Bench of this Court in Lakshmi v. Deputy Superintendent of Police (1994 (2) Crimes 208). In this very judgment this Court has held as follows:

"28. As far as Section 272, Cr.P.C. is concerned, we have referred to certain notifications placed for our scrutiny by the learned Additional Public Prosecutor. As a matter of fact, Tamil Nadu Official Language Act, 1956, was ushered in almost on similar lines, as the earlier notifications, which, on the advent of the Act, have ceased to be operative. To reiterate, language of the subordinate Courts is Tamil for a limited extent and not that English had been barred entry from proceedings in subordinate Courts lock, stock and barrel."

(Emphasis supplied)

Much reliance was placed upon the above by the learned Counsel for the accused. In that case, the accused Velu returned the papers given to him under section 207 Cr.P.C. to the designated Court and the trial Court framed charges against the accused ignoring that. In that context this Court had quashed the charges and directed the trial court to furnish the copies and frame charges again. In fact, the Division Bench was very critical of the conduct of the counsel for the accused and the Court, which is evident from the following comment:

"The procedure adopted by the Counsel and the Court reminds us of playing ducks and drakes."

8. The next contention of Mr.R.Sankarasubbu is that the approver was given pardon by the Revenue Divisional Officer and not by the Chief Judicial Magistrate, and therefore the tender of pardon stands vitiated. It should be remembered that the offence in this case took place on 8.2.1973 when the Code of Criminal Procedure 1898 was in vogue. Nevertheless, the approver was examined by the

Committal Court on 30.12.1974 in terms of section 306(4) of Cr.P.C. Fortunately the approver is alive today and he will be examined before the Sessions Court to thwart, which the accused is taking such pleas challenging the very tender of pardon that was given to him way back in 1973.

9. It is seen that on facts also there is no material to show that the tender of pardon was given by the Revenue Divisional Officer as alleged by the learned counsel. The Revenue Divisional Officer seems to have recorded the confession statement of the approver in his capacity as Executive Magistrate. The confession statement of the approver is not a substantive piece of evidence against this petitioner and only his evidence before the trial court can be said to be substantive piece of evidence. Mr.R.Sankarasubbu relied upon the following judgments:

- i) A.Devendran v. State of Tamil Nadu, (1997) 11 SCC 720
- ii) Suresh Chandra Bahri v. State of Bihar, 1995 SCC (Crl) 60
- iii) Kalu Khoda & Others v. The State, AIR 1962 Gujarat 283 (FB)

The facts obtaining in all the aforesaid cases is that the approver was not examined in the Committal Court and in that context the Courts held that the examination of the approver before the Trial Court will vitiate the conviction and sentence. In this case, the approver has been examined before the Committal Court as stated above, and therefore the above judgments will not apply to the facts and circumstances of the case.

10. As regards the right of the accused to cross-examine the approver before the Committal Court, this issue has also been answered in Crl.O.P.No.17884 of 2015 dated 27.7.2015 relying upon the Supreme Court Judgment in Ranadhir Basu vs. State of West Bengal [2000 AIR SCW 499]. As stated earlier this accused was absconding for over 30 years and he was apprehended by the Police only in the year 2009, and now it is not open to the accused to say that the approver should be examined each time before the Committal Court whenever an absconding accused is arrested and produced, for that would lead to ludicrous results.

In the result, these Criminal Original Petitions are devoid of merits and the same are dismissed. Connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vr

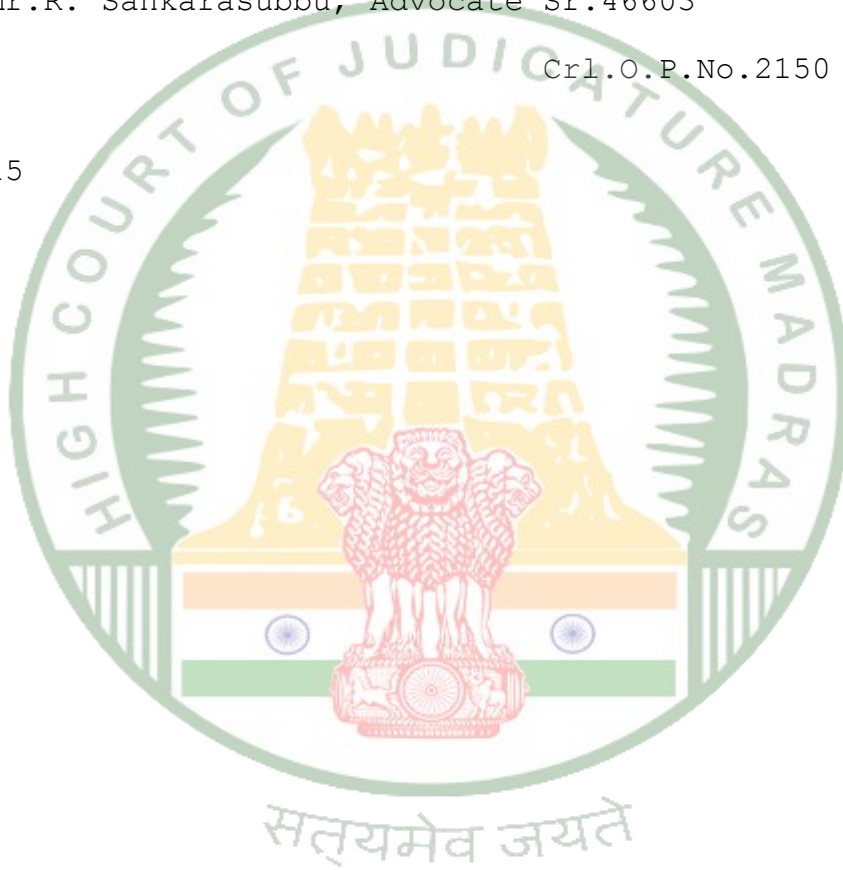
To

1. The Inspector of Police, CBCID Crime Branch
Barur Police Station,
Dharmapuri District (Crime No.31 of 1973)
2. The Additional Sessions Judge, Krishnagiri.
3. The Sessions Judge, Dharmapuri.
4. The District Munsif Cum Judicial Magistrate,
Pochampalli.
5. The Public Prosecutor, High Court, Madras.

1 cc to Mr.R. Sankarasubbu, Advocate Sr.46603

Cr1.O.P.No.2150 & 21006 of 2015

SKV(CO)
EU 14.09.15



WEB COPY