

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

CrI.O.P. No. 4315 of 2015
and
M.P.No.1 of 2015

Sathis @ Sathishkumar

... Petitioner

vs.

State represented by
the Inspector of Police,
Kodumudi Police Station,
Erode District.
(Crime No.279 of 2012)

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside the order dated 20.1.2015 in refusing to cross examine the accused turned approver/C.W.1 in S.C.No.78 of 2014 on the file of the Sessions Court/Mahila Court (Fast Track Court), Erode and permit the petitioner to have fair trial after allowing him to mark the photographs and put questions in the cross examination to test his veracity of the said witness by allowing this Criminal Original Petition.

For Petitioner : Mr. N.Manokaran

For Respondent : Mr. M. Maharaja,
Additional Public Prosecutor

सत्यमेव जयते

O R D E R

The first accused in S.C.No.78 of 2014 on the file of the Sessions Court/Mahila Court (Fast Track Court), Erode is the petitioner. The petitioner is facing charge under sections 120B, 364, 302, 392, 291 r/w 34 IPC. Along with the petitioner, one Manikandan was also arrayed as third accused and the said Manikandan

filed a Petition in CrI.M.P.No.100 of 2014 under section 306 of Cr.P.C., before the said Court seeking permission to treat him as an approver in the case and that petition was allowed, his statement under section 164 Cr.P.C. was recorded and he was treated as approver in support of the prosecution and was examined as C.W.1. During cross-examination of the said Manikandan, a question was asked to him/CW.1 regarding the presence of a Constable in the Court premises, by name, Manzoor, attached to Sivagiri Police Station. Another suggestion was put to Manikandan/CW.1 that he was kept in a lodge along with the said Manzoor and the said Manzoor was also coming to the Court along with him and that was denied by the said witness CW.1. Another question was also asked to CW.1 to the effect that Manzoor, the constable was also present in the Court. CW.1 answered that he did not know any person, by name, Manzoor. Thereafter, the learned counsel appearing for the petitioner/A.1 informed the court that the photographs of Manzoor talking with CW.1s were taken in the Cell Phone in the afternoon while taking lunch with CW.1 and sought permission to show those photographs to the witness CW.1 and mark the photographs through him but the request of the learned counsel for the petitioner was rejected by the learned Sessions Judge and the learned Sessions Judge stated that the petitioner may approach the High Court and obtain clarification about the refusal by the Court with regard to photographs shown by the counsel and deferred the cross-examination. Therefore, this petition is filed by the petitioner stating that the Court ought to have allowed the photographs to be shown to CW.1 and directed CW.1 to answer the questions with relations to the photographs.

2. Mr.N.Manokaran, learned counsel for the petitioner submitted that the trial Court erred in rejecting the request of the learned counsel for the petitioner before the Court below in showing the photographs taken in the afternoon during the cross-examination of CW.1. He further submitted that in the photographs, the police Constable, by name, Manzoor and CW.1 along with two other policemen were sitting together and the purpose of showing those photographs to CW.1 was to discredit the evidence of CW.1 who has also deposed that he did not know any person by name Manzoor and under section 146 of the Indian Evidence Act, questions may be asked to the witnesses to test his veracity if it affects the credit of the witness by injuring his character and sufficient guidelines have been provided under section 148 of the Indian Evidence Act and the petitioner must have been permitted to show the photographs taken in the Cell Phone to CW.1 and put questions to CW.1 regarding the persons found in the photographs. He also submitted that even though approver's evidence cannot be the basis for conviction, it may be used when there are

corroboration to the approver's evidence in material particulars and therefore, to discredit the evidence of approver, the photographs ought to have been marked and the petitioner must be allowed to put questions to CW.1. He also relied upon the following judgments in support of his contention:-

- 1 R.Dineshkumar @ Deena Vs. State and others
[2015-1-LW.(Cr1.) 273]
- 2 Tomaso Bruno and another Versus State of
U.P. [2015 (1) SCALE 498]
- 3 Ravinder Singh Versus State of Haryana
[(1975) 3 Supreme Court Cases 742]
- 4 Sheshanna Bhumanna Yadav Versus State of
Maharashtra [1970(2) Supreme Court Cases
122]
- 5 Shri N.Sri Rama Reddy etc., Versus Shri
V.V.Giri [1970 (2) Supreme Court Cases 340]

3. In the judgment reported in 2015-1-LW.(Cr1.) 273 supra, the learned Judge of this Court considered sections 132, 138, 146, 147 and 148 of the Indian Evidence Act and held as follows:-

61.V. ... (a) If the Court finds that the said question is a proper question as dealt with in Clause 1 of Section 148, the Court shall compel the witness to answer the question and if the answer tends to directly or indirectly incriminate him, he shall be protected by the proviso to Section 132 of the Act.

(b) If the Court finds that the question is an improper question as dealt with in Clauses 2 and 3 of Section 148 of the Act, the Court shall not compel the witness to answer the question and instead warn the witness that he is under no obligation to answer the said question.

(c) Despite the warning by the Court and without any compulsion by Court, if the witness answers voluntarily an improper question dealt with in Clauses 2 and 3 of Section 148 and if the

answer tends to directly or indirectly incriminate him, he shall not be protected by the proviso to Section 132 of the Act.

(d) When an improper question is asked as dealt with in Clauses 2 and 3 of Section 148 of the Act, and after warning by the Court, if the witness refuses to answer the question, the Court may draw adverse inference that the answer if given would be unfavorable.

(e) While under cross examination, when an improper question is asked as dealt with in Clauses 2 and 3 of Section 148 of the Act, if the Court, inadvertently fails to warn the witness and the witness answers the question and if the said answer tends to incriminate him, he shall be protected by the proviso to Section 132 of the Act.

4. Therefore, by applying the principles laid down in the judgment referred to as above, to test the veracity or to discredit the evidence of approver, questions can be asked. However, the photographs alleged to have been taken on a particular date can be marked through the person who had taken the photographs and thereafter, the questions can be asked with respect to such photographs to CW.1.

5. Hence, the petition is disposed of by directing the learned Sessions Judge, Mahila Court (Fast Track Court), Erode, to follow the guidelines given in the aforesaid decision and permit the petitioner/A.1 to cross-examine CW.1 with respect to those Photographs after marking them through proper source. The connected Miscellaneous Petition is closed.

Sd/-

Asst. Registrar

/true copy/

Sub Asst. Registrar.

asvm

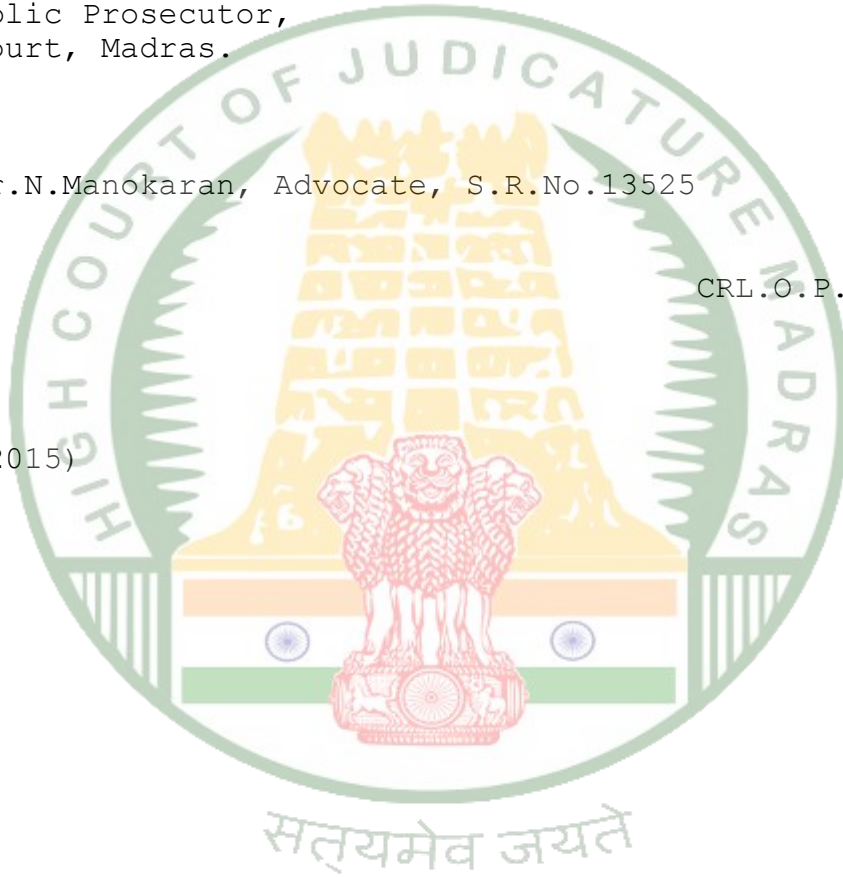
To

1. The Sessions Judge,
Mahila Court (Fast Track Court),
Erode.
2. The Inspector of Police,
Kodumudi Police Station,
Crime No.279/2012
Erode District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.13525

CRL.O.P. No.4315 of 2015
and
M.P.No.1 of 2015

EV(CO)
CA(12/03/2015)



WEB COPY