

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2016

CORAM:

THE HON'BLE DR.JUSTICE P.DEVADASS

CRL.R.C.No.279 of 2016

and

Crl.M.P.No.1932 of 2016

R.Nandagopal ... Petitioner/Respondent

vs.

The Inspector of Police
CBI/ACB/Chennai. ... Respondent/Petitioner

Criminal Revision Case filed under Section 397(1) read with Sec. 401 of Cr.P.C against the order dated 20.01.2016 passed by the learned II Additional and Sessions Judge, Chennai in Crl.M.P.No.6414 of 2015 in C.A.No.43 of 2014.

For Petitioner : Ms.Y.Kavitha

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor
[CBI cases]

O R D E R

The sole accused in C.C.No.4805 of 2010 on the file of the learned Additional Chief Metropolitan Magistrate, Chennai aggrieved by the order passed by the appellate court dated 20.01.2016 in Crl.M.P.No.6414 of 2015 in Crl.A.No.43 of 2014 allowing the reception petition filed by the prosecution under Section 391 Cr.P.C., has directed this revision.

2. The petitioner was appointed as a Constable in CBI. Claiming to be a member of 'Kattunaicken Community' a Scheduled Tribe, he produced a community certificate. Based on the allegation that the said Certificate is false, he was prosecuted in C.C.No.4805 of 2010 for an offence under Section 420 IPC and certain other offences. The learned Additional Chief Metropolitan Magistrate convicted and sentenced him.

3. Aggrieved, the petitioner preferred Criminal Appeal in C.A.No.43 of 2014 challenging his conviction and sentence. Now, it is pending before the learned II Additional Sessions Judge, Chennai.

4. At this juncture, CBI/respondent filed CrI.M.P.No.6414 of 2015 for marking the report of the State Level Scrutiny Committee to the effect that the Community Certificate produced by the petitioner is not genuine and also to examine Kasi, a member of the said Scrutiny Committee. The appellate court allowed it on the ground that it would be necessary for rendering a just decision in this case.

5. Now, the legality of the said order is being challenged by the petitioner in this revision.

6. The learned counsel for the petitioner would submit that though the Appellate Court has the power to receive additional evidence under Section 391 Cr.P.C., but, it cannot be used to fill up lacuna. In this connection, the learned counsel would cite Thomas @ Thomachan vs. State of Kerala [1999 CrI.LJ 1297].

7. The learned counsel for the petitioner would also submit that the Appellate Court cannot permit a party to the appeal proceedings to use Section 391 Cr.P.C., to remove a lacunae, which is already available in favour of a party as it would amount to prejudicing the defence of that party. In this connection, the learned counsel would cite the Allahabad decision Amar Singh vs. Manki and others [1982 (6) ACR 148].

8. The learned counsel for the petitioner would also contend that already on this aspect two witnesses viz., P.Ws.35 and 36, who are the then Chairman and Member of the State Level Scrutiny Committee have been examined. In such circumstances, now the present endeavour of the CBI is nothing but adding and padding of their case by introducing the report and by examining one Kasi, which is nothing but filling up a lacuna.

9. On the other hand, the learned Special Public Prosecutor, CBI Cases would submit that in this case the need arose because of a report issued, after fresh enquiry conducted by the Scrutiny Committee as per the orders of a Division Bench of this Court. Further, the respondent is duty bound to produce relevant evidence to the court to arrive at a just decision in this case. In such circumstances, no question of filling up lacuna or removing the lacuna or introducing a new case will arise. The decisions cited are not applicable to the facts of this case. He would further submit that the impugned order does not suffer from any legality or impropriety.

10. I have anxiously considered the rival submissions. Perused the impugned order of the appellate court and also the decisions cited by the learned counsel for the petitioner.

11. We are totally in agreement with the principles of law stated by the learned counsel for the petitioner based on the Kerala and Allahabad decisions, but the question is their applications to this case.

12. When earlier an adverse order has been passed by the State Level Scrutiny Committee, the petitioner came to this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, wherein this Court seems to have set aside the order, having found that principles of natural justice has not been followed and directed fresh enquiry. It is pertinent to note that before it was set aside, the then Screening Committee members were examined as P.Ws.35 and 36 in this case. In the wake of the orders passed by the Writ Court, fresh enquiry was conducted by the State Level Scrutiny Committee which, gave a fresh report recording an adverse finding and in that Committee one Kasi acted as a member. By the time, the criminal case reached finality, the finding of the criminal court was re-opened by preferring the appeal by the petitioner/accused, which is now pending before the learned II Additional Sessions Judge, Chennai. At this juncture, the prosecution/respondent took up the task of bringing to the notice of the appellate Court, the fresh report of the State Level Scrutiny Committee through witness, Kasi. In this respect, no new case is brought in, no lacuna is sought to be filled up or removed. The prosecution seems to have indulged in strengthening its case by adducing further evidence. But the point is whether it is necessary to render a correct finding in this case. That was the view of the appellate court

13. In the facts and circumstances, it cannot be faulted.

14. In view of the foregoing, this revision fails and it is dismissed. Consequently, the connected miscellaneous petition is closed.

15. It emanates from the impugned order that the marking of the additional prosecution documents and examining of additional prosecution witness is to be done before the appellate court and while doing so, it is made clear that the appellate court, shall give reasonable opportunity to the accused/petitioner.

Sd/-

Assistant Registrar(J)

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Sub Assistant Registrar

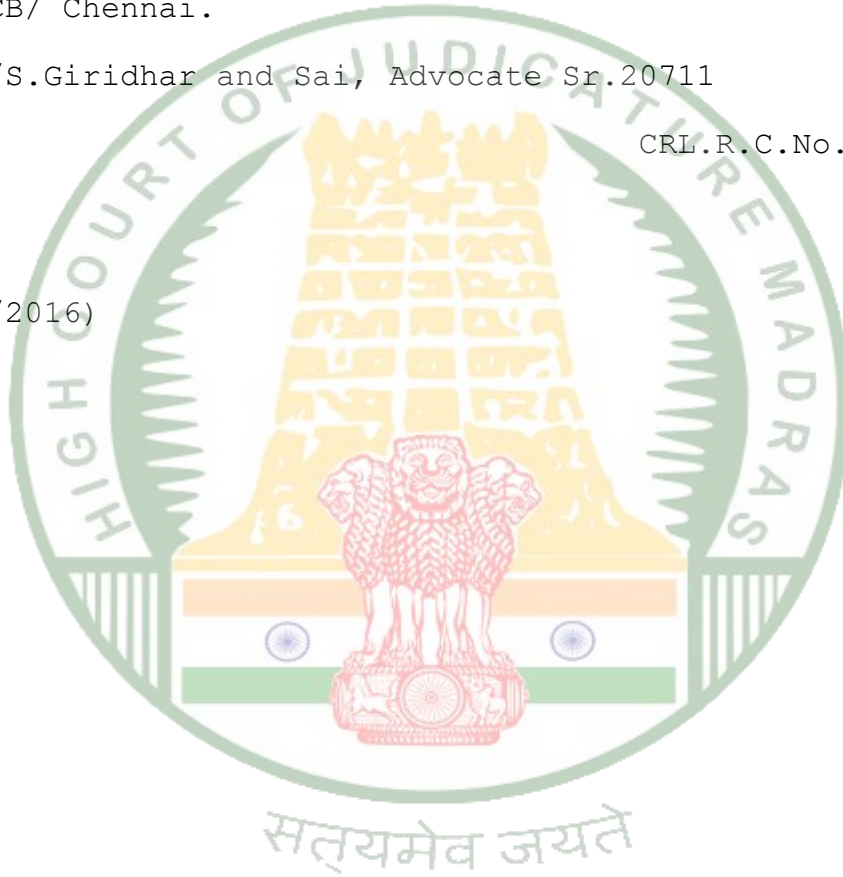
To

1. The II Additional Sessions Judge,
Chennai.
2. The Special Public Prosecutor,
[CBI Cases], High Court,
Madras.
3. The Inspector of Police,
CBI/ACB/ Chennai.

+1cc to M/S.Giridhar and Sai, Advocate Sr.20711

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ala(CO)
srg(21/04/2016)



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