

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.04.2016

CORAM

THE HON'BLE Dr.JUSTICE P.DEVADASS

Criminal Revision Case Nos.357 and 369 of 2016
and
Crl.M.P.No.2469 of 2016

Dr.Zubaida Begum ..Petitioner in both revisions

vs.

State represented by
The Inspector of Police
District Crime Branch
Kancheepuram
(Crime No.37/2012)

..Respondent in both revisions

Criminal Revision No.357 of 2016 is filed against the order dated 23.02.2016 made in Crl.M.P.No.406 of 2015 in C.C.No.260 of 2014 on the file of learned Judicial Magistrate No.II, Chengalpattu.

Criminal Revision No.369 of 2016 is filed against the order dated 23.02.2016 made in Crl.M.P.No.1289 of 2015 in C.C.No.260 of 2014 on the file of learned Judicial Magistrate No.II, Chengalpattu.

For petitioner
in both revisions : Mr.S.Swamidoss Manokaran

For respondent
in both revisions : Mr.V.Arul
Government Advocate (Crl. Side)

COMMON ORDER

As these Criminal Revisions are connected on factual matrix, they were heard together and are being disposed of by this common order.

2. Crl.R.C.No.357 of 2016 has been directed by A1 as against the dismissal of Crl.M.P.No.406 of 2015 in C.C.No.260 of 2014 (Judicial Magistrate No.II, Chengalpattu), which has been filed to recall NBW without her personal appearance before the Court.

3. Crl.R.C.No.369 of 2016 is directed as against the dismissal of her Crl.M.P.No.1289 of 2015 in C.C.No.260 of 2014 filed under Section 205 of Cr.P.C. to dispense with her personal attendance in the said Court.

4. A1 is being prosecuted before the said Magistrate's Court for certain offences. Copies under Section 207 Cr.P.C. is to be furnished to her. A1 filed Section 317 Cr.P.C petition to condone her absence on a particular hearing date. It was allowed and the case was posted to a subsequent hearing. On that hearing also, it is stated that the learned counsel for A1 was late in attending the Court. However, by the time NBW was issued against A1.

5. In such circumstances, A1 filed Crl.M.P.No.406 of 2015 to recall the NBW without the personal appearance of A1. Medical Certificate for A1 also has been produced. A1 is 74 years old too. It was dismissed by the trial Court on the ground that the case is pending without any progress.

6. A1 also filed Crl.M.P.No.1289 of 2015 under Section 205 of Cr.P.C through his counsel, to dispense with her personal appearance. A1's counsel also gave personal undertaking to receive copies under Section 207 Cr.P.C. on behalf of A1. He had also filed a petition to furnish the copy. However, Crl.M.P.No.1289 of 2015 was also dismissed on the very same day on the very same reasoning. Aggrieved, A1 has directed these revisions.

7. I have heard both sides, perused the impugned orders and the materials on record.

8. At first blush, both the impugned orders are not in accordance with law. They suffer from legality. They also suffer from propriety. The learned Magistrate appears to be not sensitive to the issue and refused to understand the reality of the situation as well as the law on the point.

9. Earlier, when a petition is filed to recall NBW, surrender petition used to be filed and the accused should present/appear/surrender before the Court. Now it has become obsolete. In fact, while sitting in Madurai Bench in Karuppiah @ Chinnathambi .vs. The Inspector of Police, Embal Police Station, Avudaiyarkoil Taluk, Pudukottai District '[2014 - 2 - L.W. (Crl.) 616]', I have held that to recall NBW, the presence of the accused need not be insisted upon. Several decisions of this Court on similar lines are also available. The trial Court simply ignored this settled position of law. Thus, the impugned order in Crl.M.P.No.1289 of 2015 must go.

10. The next issue is appearance of accused by special vakalath. These petitions are filed under Section 205 Cr.P.C. They are not uncommon in Criminal Courts.

11. Section 205 Cr.P.C runs as under :-

205. Magistrate may dispense with personal attendance of accused.

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner herein before provided.

12. Section 205 Cr.P.C. has two parts. Section 205(1) Cr.P.C enables the Court to dispense with the personal appearance of the accused. However, some arrangements have to be made by the accused by engaging a counsel to represent the accused. But if we read the language employed in Sections 205 (1) and 205(2) Cr.P.C, there is no absolute right in the accused that he will never or ever appear before the Court.

13. Section 205(2) Cr.P.C enables the Court to direct the accused to present in the Court although his personal appearance has been dispensed with under Section 205(1) Cr.P.C.

14. The Court cannot use its discretion under Section 205 (2) Cr.P.C. just to see the face of the accused or just gather crowd in the Court. In fact, too much gathering in the Criminal Court is a nuisance to the Court, lawyers and prosecution and court staff. It will distract the court from its concentration. Therefore, liberal usage of the power under Section 205(1) Cr.P.C has been advocated.

15. When time is so important for the Court, it is also so important to the accused. He has to eke out his livelihood. Attend to his work, without wasting his time from morning to evening in the Court when the case is posted for not making effective progress, such as plea of the accused is to be recorded, where identification of the accused is involved, where his examination under Section 313 Cr.P.C is to be done, where he has to questioned on the proposed sentence. But even then when the case is very simple in nature, his counsel himself could answer the questions under Section 313 Cr.P.C. and the presence

of the accused need not be insisted upon. The defence counsel can always receive copies under Section 207 Cr.P.C and give acknowledgement.

16. There is no wrong in Court directing the accused to be present in Court when the case is posted for any effective hearing.

17. Notwithstanding the position of law, the trial Court is very much concerned with seeing the face of the accused when really the case is not posted for any effective hearing, when especially the defence counsel is also ready to receive the copies under Section 207 Cr.P.C. on behalf of A1.

18. Further, a disturbing factor brought to our notice is that the learned Judicial Magistrate has directed the accused to pay necessary charges to get copies under Section 207 Cr.P.C. As a matter of right, an accused is entitled to receive copies under Section 207 Cr.P.C. free of cost. It emanates from the Constitutional provisions Article 22(1), 21 and the statutory provision Section 303 Cr.P.C. One cannot defend himself without knowing the accusations made against him which would be found in incriminating materials, such as statements recorded under Section 161 Cr.P.C and documents. One cannot ask to pay to defend himself. Right to defend is not mere defence, it means 'effective defence'. Asking a person to get copies of incriminating materials on payment of money will result in making his defence ineffective. If one is not able to pay for it, the accused will be incapacitated/prevented from making his defence. An accused is presumed to be innocent, until he is proved otherwise by presenting legal evidence. To facilitate him to defend, he shall be furnished copies of incriminating materials at free of cost. In fact, Section 207 Cr.P.C imports principles of natural justice to Criminal Law. Therefore, the impugned order of the learned Magistrate must go.

19. In view of the foregoing, ordered as under:-

(i) Both the Criminal Revisions are allowed.

(ii) The orders passed by the learned Judicial Magistrate No.II, Chengalpattu, in CrI.M.P.No.406 of 2015 and CrI.M.P.No.1289 of 2015 in C.C.No.260 of 2014 dated 23.02.2016 are set aside.

(iii) The learned Judicial Magistrate No.II, Chengalpattu shall restore both the Criminal Miscellaneous Petitions to file and dispose of them without insisting upon the

presence of the accused and permit A1 to appear through his counsel and shall not insist upon the presence of the accused, when it is really not required for any effective hearing in the case.

(iv) Copies under Section 207 Cr.P.C shall be furnished to the defence counsel on record for A1.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

1. The Principal Sessions Judge,
Chengalpattu.
2. The Chief Judicial Magistrate,
Chengalpattu.
3. The Judicial Magistrate No.II,
Chengalpattu.
4. The Section Officer,
Criminal Side,
High Court, Madras.

Copy to:

The Director,
Tamil Nadu State Judicial Academy,
Chennai.

+1cc to M/S.S.Swamidoss Manokaran, Advocate Sr.21657

Cr1.Revision Case Nos.357 and 369 of 2016
and
Cr1.M.P.No.2469 of 2016

ppa (CO)
srg (27/04/2016)