

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.04.2016

Coram:

THE HON'BLE Mr.JUSTICE M.VENUGOPAL

Crl.R.C.No.663 of 2016

1. Vaiyapuri
2. Saroja

..Petitioners

Vs.

1. The Inspector of Police,
V.V.Nadu Police Station,
Namakkal

2. R.Thangavel
3. Valangiyadanabagiyam
4. Saroja
5. Ponnammal alias Rajammal

..Respondents

Prayer: Petition filed under Section 397 r/w 401 of Cr.P.C., against the Order passed on 30.03.2016 in C.M.P.No.260 of 2016 in C.C.No.141 of 2010 on the file of the Judicial Magistrate Court - II, Namakkal.

For Petitioners : Mr.S.Balasubramanian

For Respondents : Mr.V.Arul for R1
Government Advocate (Crl.Side)

O R D E R

Heard the Learned Counsel appearing for the Petitioners / A.1 and A.2 and the Learned Government Advocate (Crl.Side) appearing for the First Respondent.

2. According to the Petitioners / A.1 and A.2 the Impugned Order of the trial court in C.M.P.No.260 of 2016 in C.C.No.141 of 2010 dated 30.03.2016 is against Law.

3. It is represented on behalf of the Petitioners that the trial court had failed to take note of an important fact that though the Inspector of Police, V.V.Nadu Police Station seized the properties on 17.02.2007, the same was not produced till 30.03.2016 and had committed an error in dismissing the Criminal Miscellaneous Petition.

4. The main plank of attack on behalf of the Petitioners before this Court is that the properties in question were not

produced till 30.03.2016 by the First Respondent / Police and as such, it would not be open to the prosecution to mark those articles in the main case.

5. Lastly, it is the stand of the Petitioners that when the trial of the C.C.No.141 of 2010 on the file of the trial court is nearing completion and P.W.1 was examined, then, it would not be open to the First Respondent / Police / Prosecution to produce the articles before trial court and this important factor was not taken into consideration by the trial court at the time of passing the Impugned Order in C.M.P.No.260 of 2016 in C.C.No.141 of 2010.

6. Per contra, on instructions, the Learned Government Advocate (Crl.Side) for the First Respondent/ Police brings it to the notice of this Court that before the trial court, on behalf of the prosecution, a memo was filed on 08.02.2016 to the effect that 'the Court has ordered to produce all case properties which was in the custody of P.W.1, as per Order in C.M.P.No.4377 of 2015 dated 29.09.2015. The prosecution accordingly producing the below mentioned properties which may kindly be accepted. It is further submitted the case properties involved in the case are perishable in nature and hence, the prosecution producing the properties in damaged condition which may kindly be accepted and thus render justice'. Therefore, it is represented that the prosecution had produced properties and contra plea taken in this regard on behalf of the Petitioners is incorrect.

7. At this juncture, this Court has perused the Objection Petition in C.C.No.141 of 2010 filed on behalf of the accused and is of the considered view that a stand is taken at Paragraph No.2 to the effect that 'the properties involved in the above case (C.C.No.141 of 2010) were recovered by the P.W.1 on 17.02.2007 and produced before the Sub Inspector of Police, Valavanthinadu Police Station, the investigating agency. But till date the property were not produce before this Court'. Further at Paragraph No.3 of the said petition it is averred as follows:-

'3. The accused further submit that the trial of the case is in progress and the prosecution never attempted to produce the property before this Hon'ble Court and now the prosecution is trying to produce the same which as is not permitted in law and as per law the properties should have to be produce before the court below this Hon'ble Court while filing the final report or before taking cognizance of the case by this Hon'ble Court.'

8. In short, the Objection taken on behalf of the Petitioners/ Accused side before the trial court was that the

trial court was to desist from taking and marking the properties in the case.

9. However, on behalf of the 1st Respondent / Police, the APP Grade II of the trial court had stated that the case is in trial stage and that the prosecution at any stage is given liberty to file a Petition under Cr.P.C. and produce the properties and the Court may receive the same in order to avoid hardship to the prosecution.

10. The trial court on a consideration of respective contentions advanced on either side had ultimately dismissed the Petition C.M.P.No.260 of 2016 on 30.03.2016 by stating that the present case was pending for more than five years and also the Hon'ble High Court in Crl.O.P.No.26489 of 2015 had passed Orders directing the completion of the main case within a period of six months. Also, the trial court was directed to dispose of the Crl.M.P.No.4377 of 2015 within a period of three weeks, only based on that C.M.P.No.4377 of 2015 was disposed of on 29.09.2015 wherein a direction was issued for producing the case properties. Only at that point of time, on behalf of the accused, Crl.M.P.No.260 of 2016 was filed. When the C.M.P.No.4377 of 2015 was filed and allowed and also when a direction was issued to produce the case properties before the Court, then, it is not proper on the part of the Petitioners to file C.M.P.No.260 of 2016 in C.C.No.141 of 2010 before the trial Court.

11. At this juncture it is to be pertinently noted that as against the Order dated 29.09.2015 passed in C.M.P.No.4377 of 2015, no further proceedings were admittedly taken. As such, the said Order in C.M.P.No. 4377 of 2015 passed between the parties inter se has become final, conclusive and binding.

12. It is needless for this Court to make a significant mention that the production of properties in a given case is one thing, marking of the said properties as M.O.s is different. In Law, reception of document in a given case is a different matter. As a matter of fact marking of the documents, admitting the same, and proving the contents are entirely altogether different in terms of Indian Evidence Act, 1872. Therefore, it is crystal clear that in Law, the Petitioners / Accused do have a legal right to raise their objections at the time of marking the concerned properties. It is for the Petitioners / Accused to avail that option before the trial court as envisaged under Law. Viewed in that perspective, the conclusion arrived at by the trial court in dismissing the C.M.P.No.260 of 2016 in C.C.No.141 of 2010 dated 30.03.2016 is flawless.

13. Resultantly, the Criminal Revision Petition fails. In fine, the Criminal Revision Petition is dismissed. The

Order dated 30.03.2016 in C.M.P.No.260 of 2016 in C.C.No.141 of 2016 is affirmed by this Court for the reasons assigned in this Petition.

It is made clear that the dismissal of the Criminal Revision Petition will not preclude the Petitioners/ Accused to raise all factual and legal pleas before the trial court by the time of marking all the properties as Exhibits.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Inspector of Police,
V.V.Nadu Police Station,
Namakkal

2. The Public Prosecutor,
High Court, Madras

1 cc to M/s.S.Balasubramanian, Advocate, sr.26065

Cr1.R.C.No.663 of 2016

ad co
kra 10.05.2016

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