

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :01.11.2017

Coram:

The Hon'ble Dr.Justice G.Jayachandran

Crl.R.C.No.1305 of 2017

A.Sivaguru

.. Petitioner

/versus/

State Rep by:

Inspector of Police,

Vigilance and Anti Corruption Unit,

Puducherry.

.. Respondent

Criminal Revision Case is filed under Section 397 read with Section 401 of the Criminal Procedure Code praying to call for the records and the order passed by the Chief Judicial Magistrate Puducherry in Crl.M.P.No.1916 of 2017 in C.C.No.81 of 2011 and judgment passed by the Chief Judicial Magistrate on 13.07.2017 set aside the same, till the disposal of the above criminal revision petition.

For Petitioner :Ms.S.Vijay

For Respondent :Mr.V.Balamurugane ,APP (Pondy)

O R D E R

This Criminal Revision is directed against the order passed by the trial Court permitting the prosecution to produce additional documents and mark the same as prosecution exhibits.

2. According to the petitioner, during the course of examination of Investigating Officer, the prosecution filed application to receive petition mentioned documents on the ground that those documents were omitted to be included in the list of documents relied by prosecution, since it was kept separately along with the Court case files in the separate room of the VAC Unit. During the inspection of all the pending documents, they have scrutinised the record room and it was found that the petition mentioned documents related to the present case, which are vital evidence left unnoticed. So, they sought leave of the Court to permit them to mark those documents. The trial Court has allowed, without considering the unexplained delay in filing the petition and repeated request by the prosecution for similar relief endlessly.

3. As per the revision petition filed by one of the accused (A1), the case is of the year 2004 and PW1 was examined in-chief as early as on 02.07.2014. At that point of time itself, reference about these documents was made by the witnesses and suggestions were put to the witnesses that such documents were not in existence. The prosecution has taken out a petition in CrI.M.P.No.76 of 2015 for further investigation and production of the five documents. The trial Court, after considering the petition and counter, dismissed the request of the prosecution vide, order dated 23.02.2015.

4. The trial Court has dismissed the said petition with liberty to file a fresh petition setting out the relevant facts regarding where those documents were kept and in whose custody they were lying and from whom they were seized. Accordingly, the prosecution has filed the fresh petition and the same was allowed on 09.04.2015. Pursuant to the same, five documents were marked as Exs.P3 to P7. Thereafter, the prosecution has proceeded and examined 40 witnesses and when the Investigating Officer was in the witness box and in the course of deposition, the present petition is filed to mark few more documents as listed in the petition.

5. The learned Additional Public Prosecutor (Pondy) appearing for the respondent submits that the documents are not new documents but, they were already recovered during the course of investigation. It could not be included in the list of documents relied on by the prosecution, while filing the final report, since it got mixed up with other case files. However, the existence of these documents and recovery of the same has been spoken by PW1 in his chief examination. That being the fact, no prejudice will be caused to the defence, if those documents are produced and admitted in evidence.

6. Though there is substantial delay in producing these documents, it is contented by the learned counsel appearing for the respondent that in the interest of justice, these documents are allowed to be marked through the competent witness, since they have bearing on the case of the prosecution and these documents have inadvertently not been annexed with the final report. For the reasons stated above, the trial Court, after considering all these facts and objections, has concluded that due to frequent transfer of the investigating officer and handing over the records, these documents could not be submitted before the Court and that the said explanation is accepted by the trial Court.

7. Since the documents sought to be marked are not new documents, but which are already recovered during the course of investigation and spoken by the prosecution witnesses PW-1 and PW-40 during the examination before the Court, the trial Court

has allowed the petition. Under revisional jurisdiction, the High Court can interfere with the order of the trial Court if it is an error apparent on the face of the records. Insofar as order under challenge is concerned, the reasoning given by the trial Court to allow the petition does not bristle with error or malice. Since the trial is on going, by admission of these documents, it will not cause prejudice to the accused, it may help him to establish in his innocence. At this stage, this Court cannot express any view about these documents. However, taking note of the fact that this case is pending since 2004, the trial Court is directed to complete the trial within a period of 3 months from the date of receipt of a copy of this order and the trial Court shall not entertain any other fresh petition from the prosecution for introducing any document whatsoever since already the Court has shown indulgence twice.

8. With the above observation, the criminal revision case is disposed of. Consequently, connected Miscellaneous Petitions is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
Vigilance and Anti Corruption Unit,
Puducherry.

2.The Additional Public Prosecutor,
Pondicherry.

+1 cc to Mr.Vijay Advocate sr 77323

Cr1.R.C.No.1305 of 2017

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