

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

Crl.R.C.No.919 of 2017 and

Crl.M.P.No.8674 of 2017

Paramasivam ... Petitioner/Petitioner/Accused
Vs.

The State represented by
The Station House Officer,
Thirubuvanai Police Station,
Puducherry. ... Respondent/Respondent/Complainant

Prayer:- Criminal Revision Petition has been filed under Section 397 & 401 Cr.P.C., to set aside the order dated 20.06.2017 in Crl.M.P.No.1237 of 2017 in Spl. S.C.No.16 of 2016 on the file of the learned Special Judge at Pondicherry.

For Petitioner : Mr.R.Rajarajan
For Respondent : Mr.M.R.Thangavel
Additional Public Prosecutor(Pondy)

O R D E R

This criminal revision has been filed against the order dated 20.06.2017, passed by the learned Special Judge (Under the POCSO Act, 2012), Pondicherry made in Cr.M.P.No.1237 of 2017 in Spl.S.C.No. 16 of 2016. सत्यमेव जयते

2. The very short facts, which are required to be noticed in this case is as follows :-

The petitioner has been charged under Section 9(c)(f) (i) & 10 of POCSO Act, 2012. During the trial, the statement given by P.W.14 has been marked as Ex.P.16. According to the petitioner, the said Ex.P.16 is nothing but the statement under Section 161 of Cr.P.C. and therefore on that ground the petitioner had filed a petition before the trial Court to eschew the said Ex.P.16 as it should not have been marked as document. The said petition has been dismissed by the impugned order, against which the present revision has been filed.

3. I have heard Mr.R.Rajarajan, learned counsel appearing for the petitioner as well as Mr.M.R.Thangavel, learned Additional Public Prosecutor (Puducherry).

4. The learned counsel appearing for the petitioner would state that the Ex.P.16 is nothing but the statement given by the witness, P.W.14, under Section 161 of the Code. Since any statement given under Section 161 of the Code does not have any evidential value and therefore it shall not be recorded or marked as document before the trial Court and hence the petitioner had rightly approached the trial Court to eschew the said Ex.P.16.

5. The learned counsel appearing for the petitioner would also state that though the said petition had been filed, the same was rejected on the ground that the trial Court claimed that it has recorded only the signature made in the said statement of Ex.P.16 and not the entire statement made by P.W.14 and therefore on that ground, it was rejected.

6. In this regard, the learned counsel appearing for the petitioner would state that the said reason adduced by the trial Court for rejecting the petition to eschew the Ex.P.16 is totally unjustifiable and hence interference is warranted from this Court.

7. I have heard Mr.M.R.Thangavel, learned Additional Public Prosecutor(Puducherry), who has, in fact, invited my attention to Section 162(1) of the Code which reads as follows :-

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made".

8. By quoting the said provision, the learned Additional Public Prosecutor would submit that in view of the aforesaid provision, a person who give the statement under Section 161 of the code shall not be asked or compelled to sign in the said statement. If at all, the investigating officer has to get the statement and reduced it in writting under Section 161 of the Code, he can do so, but the same does not have evidential value before the eye of law. That being so, the reason given by the learned Judge, in rejecting the application, through impugned order, to state that only the signature of P.W.14, made in the statement alone was marked as Ex.P.16 and not the entire statement, is not in consonance with Section 162 (1) of the Code and therefore the reason given by the learned Judge may not be justifiable, the learned Additional Public Prosecutor contended.

9. This very fair submission made by the learned Additional Public Prosecutor, in the true spirit of assisting this Court, is highly appreciable. As has been rightly pointed out by the learned Additional Public Prosecutor, when, getting the signature of the party in the statement under Section 161 of the Code itself is prohibited within the meaning of Section 162 (1) of the Code, the question of marking the signature found in such statement as exhibit does not arise. Therefore the said reason given by the learned Judge in rejecting the petition for eschewing the Ex.P.16 is absolutely unjustifiable as it runs contrary to Section 162(1) of the Code. Therefore, this Court is of the view that the impugned order is liable to be set aside, accordingly it is set aside and the prayer sought for by the petitioner before the Court below to eschew Ex.P.16 is allowed.

10. With these directions, the criminal revision case is allowed. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar (CS VI)

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WEB COPY

Sub Assistant Registrar

rts

To

1. The Special Judge, [UNDER THE POCSO ACT]
Pondicherry

2. The Station House Officer,
Thirubuvanai Police Station,
Puducherry.

3. The Public Prosecutor,
Puducherry.

+1 C.C. to The Government Pleader for Puducherry, High Court
SR.NO. 68073/17

+1 C.C. to M/S.R.RAJARAJAN Advocate SR.NO. 68323/17

Crl.R.C.No.919 of 2017 and
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T.R (01/11/2017)



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