

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.03.2017

PRONOUNCED ON: 28.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.R.C.No.99 of 2017
and
CrI.M.P.No.1140 of 2017

P.Sathiskumar ..Petitioner/Accused No.1

vs.

State represented by
The Inspector of Police,
Kodumudi Police Station,
Crime No.279 of 2012,
Erode District.

..Respondent/Complainant

Criminal Revision preferred under Section 397 r/w. 401 Cr.P.C., to call for the records relating to the order dated 28.12.2016 in CrI.M.P.No.414 of 2016 in S.C.No.78 of 2014 on the file of the Sessions Court/Mahila Court (Fast Track), Erode and set aside the same.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.R.Ravichandran,
Government Advocate (CrI. Side)

ORDER

This revision has been filed against the order dismissing the petitioner's application filed under Section 45 of the Indian Evidence Act to send the disputed document for comparing the signature to the Hand Writing Expert.

2. The petitioner is A1, in S.C.No.78 of 2014, on the file of Sessions Court, Magalir Neethi Mandram (Fast Track), Erode. Totally there are 3 accused. All of them stood charged for the offences under Sections 120(B), 364, 302, 392, 201 r/w.34 IPC. Earlier, the third accused in this case one Manikandan turned as an "Approver" and filed a petition under Section 306 Cr.P.C, and the above application was allowed by the trial court and his statement was recorded under Section 164 Cr.P.C. and a tender of pardon was also given to him, and

he was treated as an "Approver", in support of prosecution case and he was also examined as C.W.1.

3. Thereafter, the trial commenced and the prosecution witnesses were examined, and the prosecution evidence was closed on 03.12.2016, thereafter, the proceedings under Section 313 Cr.P.C. was also completed on 14.12.2016. After that a petition was filed by the petitioner to recall P.W.30, the investigating officer and that was also allowed and the prosecution evidence was finally closed on 20.12.2016, and the matter was posted for defence side witness. At this stage, the petitioner herein had filed an application under Section 45 of Indian Evidence Act for sending the petition filed by the approver/A3 to the Handwriting Expert for comparing the handwriting found in the petition filed by A3 under Section 306 CrPC. The above application has been filed on the ground that the respondent police has illegally influenced A3 and forcibly detained him in a lodge at Kodumudi by one Mansoor, a Head Constable and writer, working in the Kodumudi Police Station, tutored him and forced him to appear before the court as an "Approver" through a written petition on 21.07.2014, which was marked as Ex.C.1. According to the petitioner, the above said petition has been scribed by the Head Constable, Mansoor and the petition was not at all written by A3. During the examination of the approver/A3, a specific question was put to him to that effect, but he denied. Subsequently, the investigating officer, P.W.30 was also cross examined to that effect and in order to establish that Ex.C.1 written petition filed by the approver/A3 is actually scribed by the said Mansoor. In the above circumstances, the petitioner filed the application to send the disputed petition(Ex.C1) to compare the same with the admitted signature of the Head Constable Mansoor found in various statements recorded by him during the investigation of this case, like, inquest report and the statements of various witnesses.

4. The trial court, by an order dated 28.12.2016, dismissed the above application on the ground that the approver/A3 was examined as early as on 19.01.2015 and the cross examination was completed on 03.02.2016, at the time the petitioner did not come forward to file a petition. Thereafter, the evidence on the side of the prosecution was closed on 20.12.2016 and when the matter was posted for defence witness, the present petition has been filed only in order to delay the proceedings and which is also vexatious. Now, challenging the same, the present revision has been filed.

5. Mr.N.Manokaran, learned counsel appearing for the petitioner would submit that there is no intention on the part of the petitioner to delay the proceedings. Since the prosecution witness was closed only on 20.12.2016, he has filed the application, immediately on 28.12.2016. Since the petitioner came to know about the involvement of the above said respondent police, coercing, A3 to turn approver and the respondent police has only stage-managed the events and filed the petition through A3. In order to establish that only the

police has coerced him to turn approver, the present petition has been filed and there is no intention to drag on the proceedings.

6. On the other hand Mr.R.Ravichandran, learned Government Advocate(Crl. Side) would submit that even though sufficient opportunities were available to the petitioner earlier, he deliberately kept quiet and after the prosecution evidence has been closed, now the present petition has been filed only to drag on the proceedings and there is no bonafide in it, and the trial court correctly considered the same and dismissed the application and there is no ground to interfere with the order of the court below.

7. I have considered the rival submissions and perused the materials available on record carefully.

8. The petitioner is facing a serious charge for an offence under Section 302 IPC and one of the accused in this case turned approver. According to the petitioner, A3 was forced and compelled by the police to turn approver, and it is not a voluntary act of A3. A fair trial is the heart of criminal jurisprudence and it is enshrined in Article 21 of Constitution of India. The fair trial includes fair and proper opportunity given to the accused to prove their innocence and produce evidence in their support, it is also their valuable right. In the instant case, immediately after closing of the prosecution evidence on 20.12.2016, he came out with the present petition on 28.12.2016. Considering the above fact that the petitioner is facing a serious charge for an offence under Section 302 IPC and in order to give a fair opportunity to prove his innocence and in the interest of justice, it is just and necessary, that the petition filed by the petitioner is to be allowed.

9. Even though the petitioner sought to compare the disputed writing found in Ex.C.1 along with that of so many admitted documents of the above Mansoor/Head constable, it is sufficient that the court below send disputed document Ex.C1 along with two of the admitted documents in which the said Head Constable/Mansoor has recorded the statements of witnesses during investigation of this case to the Handwriting Expert at Forensic Department, Chennai for obtaining an expert opinion.

10. As already the evidence of the prosecution was closed as early as on 20.12.2016, the court below is directed to send the document in dispute along with the admitted signatures, forthwith to the Forensic department and obtain the opinion on or before 13.04.2017 and thereafter, the trial Court is directed to proceed further and complete the trial and pronounce judgment on or before 28.04.2017.

11. With the above direction, the criminal revision petition is allowed and the order dated 28.12.2016 made in CrI.M.P.No.414 of 2016 in S.C.No.78 of 2014 on the file of the Sessions Court/Mahila Court (Fast Track Court), Erode, is set aside. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrp

To

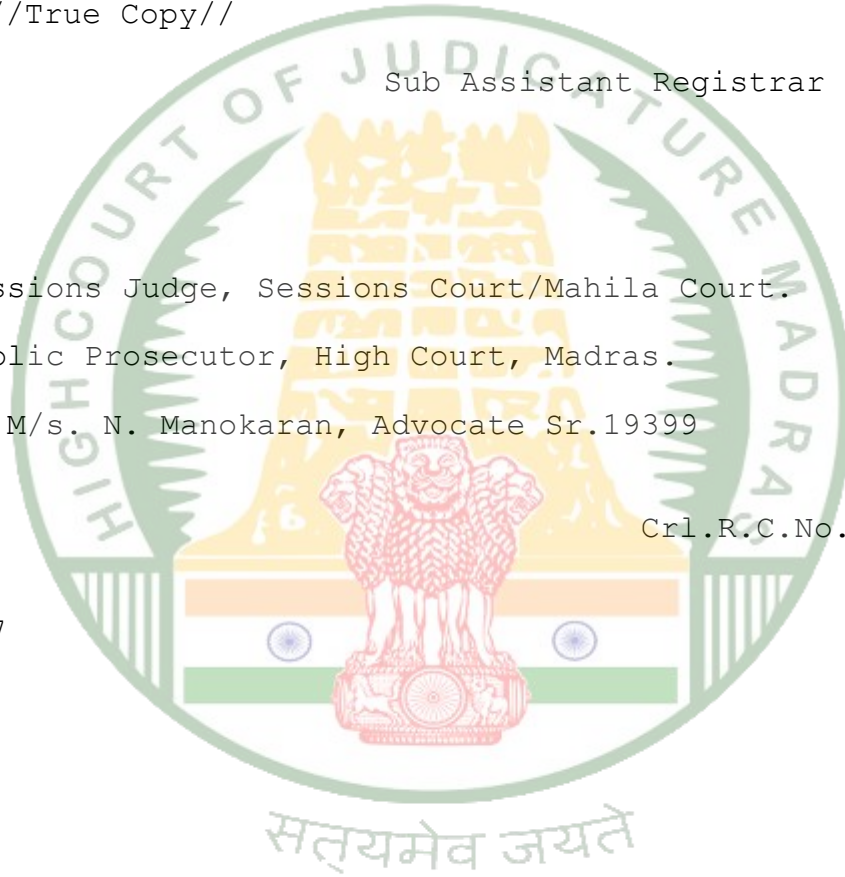
1. The Sessions Judge, Sessions Court/Mahila Court.

2. The Public Prosecutor, High Court, Madras.

+ 1 cc to M/s. N. Manokaran, Advocate Sr.19399

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NRI (CO)
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