



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.113 of 2015

and

CRL MP(MD)No.1 of 2015

Orders Reserved on 07.11.2016

Z.Thomas Zacharia : Revision Petitioner / A1

Vs.

1.The Inspector of Police,
Kottor Police Station,
Kanyakumari District
(Crime No.280 of 2010) : 1st Respondent / Complainant

2.Appukutan : 2nd Respondent / Defacto
Complainant.

*(R2 impleaded vide order,
dated 10.06.2015 made in MP(MD) 2/15)

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records pertaining to the order in Cr.M.P.No.201 of 2015 in S.C.No.62 of 2011, on the file of the Assistant Sessions Court cum Chief Judicial Magistrate Court, Nagercoil, Kanyakumari District in Crime No.280 of 2010, on the file of the respondent police and set aside the same.

For Petitioner : Mr.T.Lajapathi Roy

For Respondent-1 : Mr.P.Kandasamy
Government Advocate(Cr1. Side)

For Respondent-2 : Mr.R.Babu Jaganath

O R D E R

This Revision has been filed praying to set aside the order passed in Cr.M.P.No.201 of 2015 in S.C.No.62 of 2011, by the learned Assistant Sessions Judge-cum-Chief Judicial Magistrate, Nagercoil, Kanyakumari District, in Crime No.280 of 2010, on the file of the respondent police.



2. Boothapandi Police has registered an FIR in Crime No.280 of 2010 against the Revision Petitioner and his wife under Section 379(NP) of IPC., and filed the Final Report, after completing the investigation against the accused persons, for the offences punishable under Sections 109, 447, 379, 420 r/w 34 of IPC., and under Section 3(1) of TNPPDL Act, 1992 and was taken on file, as PRC No.6 of 2011, on the file of the learned Judicial Magistrate, Boothapandi and was committed to the learned Principal Sessions Judge, Nagercoil, which made over the case to the learned Chief Judicial Magistrate at Nagercoil, for further proceedings and is pending as S.C.No.62 of 2011 on its file. During the pendency of the evidence of prosecution, the prosecution filed Cr.M.P.No.201 of 2015, seeking permission to file the documents mentioned therein. In the evidence of the prosecution, quoting the provisions of law in the said petition, as Section 173(5) and 173 (8) of Cr.P.C. The said petition was allowed by the trial Court in its order, dated 14.02.2015, relying on the decision of the Principal Bench of this Court in **S.Shankar Vs. State Rep.by the Sub-Inspector of Police, Chennai and Others** reported in **(2007 (1) MLJ (Cr1.) 969)**, after hearing both sides. Aggrieved by that order, the present Revision Petition is filed by the first accused to call for the records pertaining to the order, dated 14.02.2015, in Cr.M.P.No.201 of 2015 in S.C.No.62 of 2011, passed by the learned Chief Judicial Magistrate, Nagercoil and set aside the same.

3. The learned counsel appearing for the petitioner would contend that the trial is going from 2011 onwards and all the witnesses were examined, except the defacto complainant and the petition relating to the impugned order was filed only to drag on the trial proceedings; that the Court below passed the impugned order without application of mind; that the petition filed under Section 173(5) and 173(38) Cr.P.C., annexing the affidavit signed by the defacto complainant is not maintainable in law and that the defacto complaint has no *locus standi* to file an affidavit in respect of the documents produced with the petition filed by the prosecution and that after adducing the evidence with regard to Final Report, the present petition is filed without any valid reason to receive the documents and hence, the impugned order is liable to be set aside.

4. The learned Government Advocate (crl.side) appearing for the first respondent and also the learned counsel appearing for the 2nd respondent / defacto complainant in this case have not chosen to file any counter in the Revision and both the counsels agreed to dispose the Revision Petition, since there is no progress in trail of S.C.No.62 of 2011, pending more than five years because of the order of interim stay passed in this Revision.

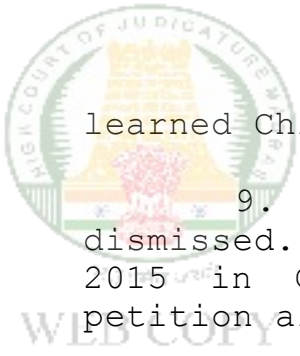


5. Perused the materials on record and heard and considered the rival submissions made by either side.

6. The trial Court has discharged the accused on filing an application under Section 227 of Cr.P.C., from the charges levelled against them under Section 379 r/w 34 of IPC., and the trial Court has examined all the witnesses including the Investigating Officer, except the defacto complainant. The prosecution filed Cr.M.P.No.201 of 2015, under Section 173(5) and 173(8) of Cr.P.C., in respect of the documents mentioned therein. On perusal of the said petition, the prosecution has not prayed for any relief for further investigation, on the basis of the documents produced in this case, as contended by the Revision Petitioner. Though the said petition was filed quoting the wrong provisions of law, as under Section 173(5) and 173(8) of Cr.P.C., the trial Court has not considered the petitioner's relief for further investigation in this case. During the course of criminal trial, if any fresh materials comes to light there cannot be any prohibition in receiving the same for proving or disproving the allegations made by the prosecution.

7. Admittedly, those documents mentioned in the petition have not been collected during the course of investigation by the respondent Police. It is the contention of the respondent that such documents are relevant and absolutely necessary to substantiate the case of the prosecution against the accused. It is opposed by the accused stating that it unnecessary, irrelevant and these documents are produced only for the purpose of filling up the lacuna and protracting the proceedings. The decision of the Principal Bench of this Court relied on by the Revision Petitioner before the trial Court in **M.Mani Vs. The Deputy Superintendent of Police, DCB, Villupuram** reported in (2013 (1) L.W (Crl.) 93) and the decision of the Hon'ble Supreme Court in **Reeta Nag Vs. State of West Bengal and Others** reported in (2009 (4) MLJ (Crl.) 1004) (SC) are not applicable to the case on hand, since the prosecution has not prayed for any relief of re-investigation or fresh investigation in this case. Hence, the relevancy of the documents mentioned in the petition will be decided on conclusion of the trial by the trial Judge. The petition relating to the impugned order is not filed seeking further investigation on the basis of the said documents. The provision of law is wrongly quoted in this petition. The documents relied and produced by the prosecution relates to the disputed property in Sy.No.775/1, which is said to be purchased by the defacto complaint and he is also in his possession.

8. Considering the above facts and circumstances of the case, this Court is not inclined to interfere with the order passed on 14.02.2015 in Crl.M.P.No.201 of 2015 passed by the



learned Chief Judicial Magistrate, Nagercoil.

9. In the result, the Criminal Revision Petition stands dismissed. The order of interim stay granted in M.P(MD)No.1 of 2015 in Cr1.R.C(MD)No.113 of 2015 is recalled and the said petition also stands dismissed.

10. The trial Court is directed to complete the trial and to dispose the case within a month from the date of receipt of a copy of this order and report the same to the Registry of this Court.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

- 1.The Assistant Sessions Judge cum
Chief Judicial Magistrate,
Nagercoil,
Kanyakumari District.
- 2.The Inspector of Police,
Kottar Police Station,
Kanyakumari District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.T.Lajapathi Roy , Advocate in SR.No. 57024

MPK

AE/SKN/SAR3/02.06.2017/4p/5c

Pre-Delivery Order made in
Cr1.RC(MD)No.113 of 2015

Dated:-
18.05.2017