



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.07.2017
Pronounced on : 24.08.2017

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CORAM :
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.(MD) No.460 of 2017
and
Crl.M.P(MD)No.4941 of 2017

Cecile Mireille Reynaud Pulido ... Petitioner

Vs.

1. State rep by
The Inspector of Police,
Thirunagar Police Station,
In Crime No.173 of 2012,
Madurai District.

2. J.Martintin Manrique Mensour ... Respondents

Petition filed under Sections 397 read with 401 Cr.P.C, to set aside the order passed by the District and Sessions Judge, Mahalir Neethi Mandram, Madurai in Crl.M.P.No.1576 of 2016 in S.C.No.109 of 2013 on 20.01.2017.

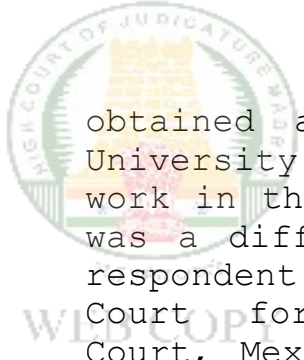
For Petitioner	: Mr.S.S.Vasudevan
For 1 st Respondent	: Mr.G.Anbusaravanan Special Public Prosecutor
For 2 nd Respondent	: K.Veluchamy

ORDER

This criminal revision case has been filed against the order dismissing the petition filed under Section 294 Cr.P.C read with Section 3 and 86 of the Evidence Act to mark documents during the trial by the petitioner, the mother of the deceased and one of the prosecution witnesses.

2.The case of the prosecution in brief is as follows:-

The deceased in this case is one Cecile Denise Acosta Reynaud, a Mexican national. The second respondent, the sole accused in this case is also a Mexican national. Both the deceased and the second respondent have been living together as husband and wife by an agreement and in the said relationship, they have also got a girl child by name Adela. The accused



obtained a doctorate degree in Mathematics, from Kalasalingam University at Virudhunagar District and continued his research work in the same university. After the birth of the child, there was a difference of opinion between the deceased and the second respondent. A custody proceedings was initiated in the Mexican Court for the custody of the minor child. The Federal District Court, Mexican City, passed an order on 16.05.2011 in respect of the custody of the minor child. Thereafter, the deceased was staying at Kerala and learning Mohini dance and as per the order passed by the Family Court, Mexico, the minor child was under the custody of the second respondent and the deceased used to visit her in the house of the second respondent. In the month of April 2012, the deceased asked the second respondent-accused to hand over the minor child to her but he refused. On 09.04.2012, when the deceased demanding the second respondent to hand over the child, there was a quarrel between them. During the said quarrel, the second respondent attacked the deceased with a knife and caused her death. Thereafter, he took the body wrapped in a plastic paper, tied it with a rope, kept it in a travel suitcase and took the body near Thoppur lake in Thirunagar, poured petrol on the body and burned it. Thereafter, based on the information given by the Village Administrative Officer, a crime has been registered in Crime No.173 of 2012 for an offence under Sections 302 and 201 IPC and after investigation, a final report has been filed against the second respondent for the offence punishable under Sections 302, 201 IPC read with Section 4 of Tamil nadu Women Harassment Act. Thereafter, the trial commenced and as many as 37 witnesses have been examined but most of the witnesses have turned hostile. Contending that the prosecution has not conducted the case in a satisfactory manner, the petitioner herein who is the mother of the deceased filed an application in CrI.O.P(MD) No.8606 of 2015 before this Court seeking appointment of Special Public Prosecutor to conduct the trial and this Court, by an order dated 22.07.2015, appointed two Special Public Prosecutors. Thereafter, witnesses were recalled and they were examined by the Special Public Prosecutors.

3.At this stage, the prosecution filed two petitions under Section 294 Cr.P.C to mark two documents namely, the copy of the investigation report, of an investigation conducted by the Attorney General Office, in Federal District Court, Mexican City against the second respondent/accused, and also the order passed by the Federal District Court, Mexico City in the custody case between the second respondent/accused and the deceased.

4.The above petition has been opposed by the second respondent-accused on the ground that the petitions are not maintainable under Section 294 Cr.P.C and the procedure for filing such a petition which is mandatory in nature was not followed by the prosecution. Apart from that he had also disputed those two documents.



5.The Court below dismissed both the petitions by a common order dated 20.01.2017 on the ground that the documents sought to be marked under Section 294 Cr.P.C were not filed in a prescribed format as per Section 294 (2) Cr.P.C as already the State Government has framed Rules in G.O.Ms.No.258, dated 08.02.1983 prescribing a format. Apart from that those documents were not collected during investigation and they do not form part of the final report under Section 173 Cr.P.C. Since the documents are not referred in the final report, the prosecution cannot maintain application under Section 294 Cr.P.C to mark those two new documents.

6.Since the prosecution did not challenge the above order, the petitioner being the mother of the deceased feeling aggrieved with that order filed this revision.

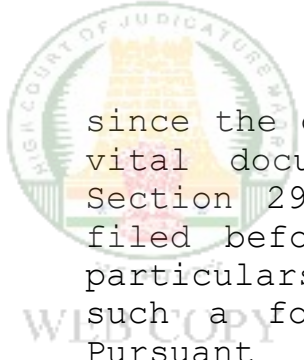
7.At the time of numbering the revision, Registry had raised an objection regarding maintainability of the revision, but this Court by an order dated 06.06.2017 directed the Registry to number the revision and thereafter, revision was numbered and after notice the revision posted for hearing.

8.I have heard Mr.S.S.Vasudevan, learned counsel for the petitioner and Mr.K.Veluchamy, learned counsel for the second respondent and Mr.G.Anbusaravanan, learned Special Public Prosecutor for the first respondent.

9.Learned counsel for the petitioner would contend that under Section 294 Cr.P.C either the prosecution or the accused is entitled to file a document. When the two documents which are sought to be marked during the trial are vital to show the motive of the accused and his previous conduct in initiating a false proceedings against the family members of the deceased, they are relevant documents under Section 8 of the Indian Evidence Act. Since the documents are the certified copy of judicial order passed by a foreign Court and proper certificates were obtained from the authorities as per 'Apostille Treaty' between India and Mexico and these two documents are crucial to support the case of the prosecution to prove the motive of the accused and also his previous conduct. The non-filing of the documents as per the prescribed format is not an illegality and it is only a formal defect, on that ground, the said applications cannot be rejected. Apart from that Section 294 Cr.P.C empowers the Court to accept the document. Merely because the above documents, do not form part of the original investigation, there is no bar for the Court to accept the document during trial. The Court below without considering the matter in proper perspective has rejected it.

<https://hcservices.ecourts.gov.in/hcservices/>

10.Per contra, learned counsel for the second respondent-accused submitted that the application itself is not maintainable



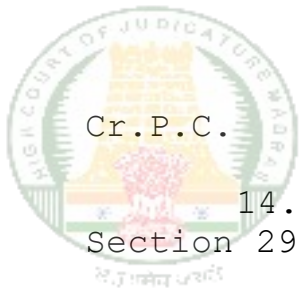
since the documents sought to be marked by the prosecution are not vital documents and they were not filed in a proper format. Section 294 (2) Cr.P.C clearly says that while any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list in such a format as may be prescribed by the State Government. Pursuant to Section 294 (2) Cr.P.C, the State Government prescribed a format in G.O.Ms.No.258, dated 08.02.1983. The petitioner did not file the document in the proper format prescribed in G.O.Ms.No.258, which is mandatory in nature. In the above circumstances, if the prosecution wants to prove the said document, it should be filed in the prescribed format then only, the accused can be called upon to admit or deny the genuineness of the said document. In the absence of the same, the petitioner cannot maintain the petition and the second respondent-accused cannot be called upon to admit or deny the genuineness of the document. He would further submit that those two documents sought to be marked only to prove the motive and previous conduct of the second respondent under Section 54 of the Indian Evidence Act, 1872, the previous character of a person is not relevant. Hence, the document cannot be marked to show the previous conduct of the second respondent. He would further contend that the revision itself is not maintainable at the instance of the petitioner, since she is only a prosecution witness in this case whereas prosecution has filed application before the trial Court but they did not choose to challenge the order passed by the Court below and hence, the revision itself is not maintainable in the eye of law.

11.Learned counsel for the second respondent has also relied on the following decisions in support of his contentions.

- (i) ***Shanmughavadivel @ Kannan Vs.State, by Inspector of Police*** reported in ***2003-1-L.W. (Cr1).341 and***
- (ii) ***Arumugam Vs.State by Sub Inspector of Police etc.,*** reported in ***2001-2-L.W. (Cr1.) 773.***

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

13.The prosecution wants to file two documents namely, the documents relating to the previous investigation conducted by the Attorney General Office of the Federal District, Mexico City against the second respondent and the judicial custody proceedings between the second respondent and the deceased in a Federal District Court, Mexico City. Even though, at the time of filing the petition, the certificate as required under the Apostille treaty was not filed, it was subsequently, filed. Now, the question to be decided is as to whether these two documents can be permitted to be marked by the prosecution under Section 294



14. Before considering the issue, it is useful to refer Section 294 Cr.P.C which reads as follows:-

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"294.No formal proof of certain documents:-

(1)Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

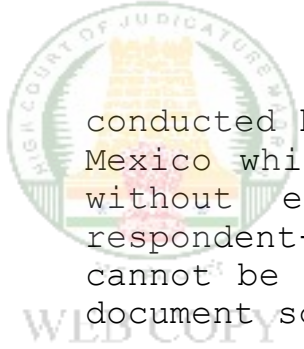
"(2)The list of documents shall be in such form as may be prescribed by the State Government

(3)Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed.

Provided that the Court may, in its discretion, require such signature to be proved."

15. Under Section 294 (2) Cr.P.C, either the prosecution or the accused should file the documents in a format as prescribed by the State Government and under Section 294 (3) where the genuineness of the document is not disputed, it should be led in evidence without proof of signature. In the instant case, the prosecution wants to mark two documents one certified copy of the court proceedings of the Federal District Court, Mexico City regarding the custody of the minor child and previous investigation conducted by the Attorney General Office for the Federal District, Mexico against the second respondent/accused.

16. Learned counsel for the second respondent-accused has admitted the custody proceedings relating to minor child but so far as, the alleged investigation conducted by the Attorney General Office regarding the previous conduct of the second respondent-accused, the learned counsel vehemently contested that this is only an investigation report and unless the person who conducted investigation has been examined enabling the accused to cross examine him, it cannot be marked as an evidence. He would further contend that the documents which are sought to be filed is only to prove the bad character of the second accused and it is not permissible under Section 54 of the Indian Evidence Act, 1972. <https://hcservices.ecourts.gov.in/hcservices/> force in the arguments of the learned counsel for the second respondent-accused. Since the second document sought to be filed by the prosecution only relates to the investigation



conducted by the Attorney General Office for the Federal District, Mexico which is not a judicial proceedings, it cannot be marked without examining the Attorney General enabling the second respondent-accused to cross examine him and also this document cannot be used to prove his previous character. Hence, the second document sought to be filed cannot be marked by the prosecution.

17. So far as the next document, i.e., order passed by the Federal District Court, Mexico City regarding the custody of the minor child is concerned, it is a judicial proceedings, learned counsel for the second respondent also did not dispute the genuineness of the above document and that there is no difficulty in admitting the document. So far as the next contention of the learned counsel for the second respondent regarding the maintainability of the application on the ground that it is not filed in a proper format is concerned, it is only an irregularity it is only a curable defect and it can be rectified by filing a fresh application in the prescribed format. So far as the objection regarding the maintainability of the revision petition, the said objection has been overruled by this Court and therefore, the second respondent cannot raise an issue of maintainability at this stage.

18. In the above circumstances, the Criminal Revision Case is partly allowed and the order dated 20.01.2017 passed by the Court below is set aside. The prosecution is directed to file a fresh petition in respect of the document of the Federal District Court, Mexico City regarding the custody of the minor child, dated 16.05.2011 in a prescribed format within a period of two weeks from the date of receipt of a copy of this order. On receipt of such petition, the Court below is directed to mark the document and proceed with the trial. Since the matter is pending from the year 2013 and most of the witnesses have already been examined, the trial Court is directed to proceed with the trial and complete the same within a period of three months thereafter. Consequently, CrI.M.P(MD)No.4941 of 2017 is closed.

Sd/-

Assistant Registrar (RTI)

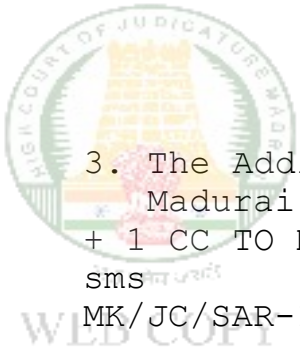
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Sub Assistant Registrar

To

1. The District and Sessions Judge,
Mahalir Neethi Mandram, Madurai

2. The Inspector of Police,
Thirunagar Police Station,
Madurai District.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
+ 1 CC TO MR.S.S.Vasudevan, ADVOCATE IN SR No.75148
sms
MK/JC/SAR-1/7P/5C/20.09.2017

order made in
Cr1.R.C.(MD) No.460 of 2017
and
Cr1.M.P(MD)No.4941 of 2017
24.08.2017