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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2017

ORDERS RESERVED ON : 14.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE A.M.BASHEER AHAMED

Cr1.R.C.(MD)No.171 of 2016

and

Cr1.M.P.(MD)No.2416 of 2016

1.Raju

2.Theiva Sigamony

3.Thangavel

...Petitioners/Accused No.3, 4 & 6

Vs.

The Inspector of Police,
Tenkarai Police Station,
Periyakulam, Theni District.

...Respondent/Compalainant

PRAYER: The Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C., to set aside the order dated 21.12.2015 in Cr.M.P.No.115 of 2015 in S.C.No.20 of 2015 passed by the learned Assistant Sessions Judge, Periyakulam.

For Petitioners : Mr.A.Jayaramachandran

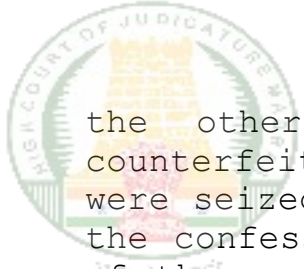
For Respondent : Mr.C.Mayilvahana Rajendran, APP

O R D E R

This Criminal Revision Case is filed to set aside the order dated 21.12.2015 in Cr.M.P.No.115 of 2015 in S.C.No.20 of 2015 passed by the learned Assistant Sessions Judge, Periyakulam.

2.The petitioners here are arrayed as A3, A4 and A6 respectively in S.C.No.20 of 2015 pending on the file of the Assistant Sessions Court, Periyakulam.

3.The case of the prosecution is that on the basis of the secrete information received on 27.02.2011, the Inspector of Police, Thenkarai Police Station along with his police parties went to a brick-kiln belonging to one Selvaraj / A2 and found a white colour TATA Safari VX bearing registration no. TN 02 AH-02 car and also a gray colour Hundai Accent CRDI bearing registration no.TN-59 S-2277 car and also 6 persons, who were sitting inside the cars and after hearing their conversation with regard to a temple Kalasam, which was kept in a blue colour plastic bucket and hence, on suspicion, the said 6 persons were arrested. The confession statement of A1 was recorded with regard to the purchase of Iridium Kalasam from A2 by paying Rs.21,700/- (counterfeit currency notes) as advance and also accompanied with



the other accused and thereafter, the above said vehicles, counterfeit currency notes of Rs.21,700/- and other equipments were seized from A1 at the place of occurrence. On the same date, the confession statement of A2 was also recorded and on the basis of the confession, bogus rice pulling Iridium Kalasam, which was covered with polythene paper and kept in a blue colour plastic bucket, was also recovered from A2 at the place of occurrence. The confession statements of A1 and A2 were recorded in the presence of witnesses. The FIR was registered against the said 6 persons in Crime No.66 of 2011 under Sections 489(C) and 420 IPC. The seized counterfeit currency notes were sent to Forensic Department for examination and a report to that effect was also received, stating that the same were counterfeit currency notes. The witnesses were examined and their statements were recorded and a final report was also filed before the Court concerned and the same was taken on cognizance pending in S.C.No.20 of 2015 before the Assistant Sessions Judge, Periyakulam for framing of charges against the petitioners in this case.

4.The petitioners / A3, A4 and A6 filed a petition in CrI.M.P.No.115 of 2015 before the said Court for discharge them under Section 227 Cr.P.C. and the same was dismissed by order dated 21.12.2015. Aggrieved by that order, the petitioners preferred the present Criminal Revision before this Court for setting aside the said order.

5.The learned counsel for the petitioners would submit that neither in the confession statement, which has been obtained from the petitioners, nor any incriminating articles were recovered from them by the respondent and no prima facie case is made out against the petitioners in order to enable the trial Court to frame the charges against them and except the confession statement of the co-accused, there is no iota of evidence to show prima facie case is made out against the petitioners and there will be no sufficient grounds for proceeding with the trial.

6.The learned Government Advocate (CrI.side) appearing for the respondent based on the counter statement filed by the respondent would submit that the absence of recording the confession statement of the petitioners does not disprove the involvement of the petitioners in the present case, that the confession statement recorded from A1 and A2 in this case and also the recovery of incriminating articles from the place of occurrence, clearly establishes the participation of the petitioners in the present case and the absence of the recovery of the articles directly from the petitioners do not weaken the case of the prosecution before the Trial Court and the confession statement of A1 and A2 does not suffer from any legal disability under Section 25 of the Indian Evidence Act since the recovery of articles were effected and the corroboration of the evidence can be decided only after examination of the witnesses in trial and hence, the Criminal Revision case is liable to be dismissed.



7. This matter is taken up for final hearing in the admission stage itself with the consent on either side.

8. Perused the materials on record. Heard and considered the rival submission advanced by either side.

9. On perusal of the records, confession statements given by A1 and A2 lead to the recovery of the incriminating articles from A1 and A2 respectively in the presence of the witnesses from the place of occurrence on the same date. Hence, under Section 25 of the Indian Evidence Act does not hit the confession statements A1 and A2 since incriminating articles were recovered on the basis of their confessions. As per the confession statements of A1 and A2, the petitioners were present at the scene of occurrence and they accompanied to the spot with A1 herein for committing the offence of cheating with the counterfeit currency notes by A1. The witnesses were examined by the investigating officer and during investigation also, they speak about the presence of the petitioners at the time of occurrence. The decisions reported in **2015(1) LW (Crl.) 541 (Dharmalingam and another Vs. State Rep. by Inspector of Police, Paramathi Circle, Namakkal District)** relied on by the petitioners herein, is not applicable to the facts of the case on hand.

10. Considering the facts and circumstances of the case and also the statements of the witnesses and also the confession of A1 and A2 lead to recovery of incriminating articles and the present of the petitioners, who accompanied with A1 to the place of occurrence and the same was spoken by A1 and A2 in his confession statement, this Court finds that there is sufficient ground for proceeding against the petitioners / A3, A4 and A6 in this case. Hence, this Court is not inclined to interfere with the orders dated 21.12.2015 passed by the learned Assistant Sessions Judge, Periyakulam in Crl.M.P.No.115 of 2015.

11. In the result, the Criminal Revision case stands dismissed. Consequently, connected Crl.M.P. is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. Assistant Sessions Judge, Periyakulam,
Theni District.

2. The Inspector of Police,
Tenkarai Police Station,
Periyakulam, Theni District.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

NBJ
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VB/MR/KKR/SAR4/26/12/2017/4P/4C

order made in
Cr1.R.C. (MD) No.171 of 2016
06.12.2017