

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Cr1.RC.No.48 of 2008

The Inspector of Police,
CBI/ACB/Chennai

... Petitioner/Complainant

Vs.

1. T.Chandrasekar

2. R.Lionel Fernandez

... Accused 1 & 2/Respondents

Prayer: Criminal revision petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the refusal order of the VIII Additional Special Judge for CBI Cases, Chennai vide proceedings dated 08.03.2017 in C.C.No.29 of 2015 and set aside the refusal order to mark the photocopy of Exhibit 46 and order to mark this vital document as one of the exhibit in this case.

For Petitioner : Mr.K.Srinivasan
Special Public Prosecutor

For Respondent 1 : Mr.Swami Subramanian

For Respondent 2 : Mr.R.Vijaya Kumar

J U D G M E N T

This revision petition is filed by the State, challenging the order of the trial Court, refusing to mark the photocopy of cash bill allegedly issued by Sri Krishna Sweets. The original being the print out from POS Machine of the seller viz., Krishna Sweets in the facsimile paper, the printed contents have been effaced due to efflux of time. The prosecution has taken photocopy of it and now sought to mark the same through P.W.15 Rajeev Kumar, who is one of the witnesses to the search and seizure of the document from the house of the accused person. Though the trial Court has marked the original receipt as Ex.P.46, it has declined to accept the photocopy on the ground that on perusal of Ex.P.46 and the photocopy sought to be marked does not reflect as same document.

2. Aggrieved over this, the present revision is filed and notice to the accused person duly served. In response to the Court notice, the learned counsel for the respondent/accused was present and made his submission justifying the order of the trial Court in rejecting the request to mark photocopy of Ex.P.46.

3. The learned counsel appearing for the respondent submitted that P.W.14 was examined by the prosecution on 08.03.2017. When subject photocopy was sought to be marked, same was objected by the defence and the trial Court holding the objection raised by the learned counsel for the accused, declined to admit it into evidence. Thereafter prosecution continued to examine that witness. Presently 23 witnesses have been examined on the side of the prosecution. Now belatedly to fill up the lacuna, the prosecution has taken out the petitioner, challenging the order of the trial Court. It is also submitted by the learned counsel for the respondent that the very same cash receipt issued by Krishna Sweets also been marked through P.W.6 as Ex.P.14. Therefore, the reasons stated in the revision petition to mark the photocopy of Ex.P.46 is unsustainable and it is only to fill up the lacuna in the prosecution case and to delay the process, the present petition is pursued.

4. The learned Special Public Prosecutor in response to the said submission would state that Ex.P.14 receipt marked through P.W.6 is the copy of the bill recovered from the possession of the vendor. Whereas, the Ex.P.46 was taken contemporaneously during the search. A photocopy of it and seizure of the accused premises is the bill issued to the buyer, which was found on the dining table of the accused house. Therefore, though the content may be the same, the fact from out of bribe money Sweet for Rs.276/- from Krishna Sweets purchased by the accused has to be proved from seizure of the bill from accused residence. For the said purpose, photocopy of Ex.P.46 which was taken contemporaneously on 08.04.2015, during the search is necessarily to be admitted. But the trial Court has erroneously held that Ex.P.46 does not reflect that it is the copy of the page 97, which is sought to be marked.

5. This Court after considering the submission made by the learned counsel for the petitioner and the learned counsel for the respondent and after going through the typed set enclosed by the petitioner, finds that, at the time of filing the charge sheet, accused had been furnished with copy of the documents relied by the prosecution in compliance, under Section 207 Cr.P.C. In which the prosecution has listed out 56 documents, in which item 6 refers bill of Sri Krishna Sweets,

T.Nagar for Rs.276 along with photocopy (original deposited in the Court).

6. In the gist of evidence, it is mentioned that the same was recovered from the residence of A2 during search. Item 12 is copy of the same cash bill, duly certified by Sakthi, HR Executive, Sri Krishna Sweets. In the gist of evidence, it is stated it is the office copy of the bill, and the customer copy is Ex.P.46 which has been mentioned earlier. In the said circumstances on comparison of the photocopy of Ex.P.46, with that of page 97 referred by the trial Court, this Court finds that the signature of the witness to the seizure, namely V.Varadarajan and Rajeev Kumar, along with their name, date and seal of Krishna Sweet page alone is found and other contents have got erased. The prosecution in its wisdom had thought fit to take photocopy of the customer bill immediately after its seizure anticipatory it will get erased in the course of time. The signature of the witnesses who were part of the such proceeding were obtained in the bill during seizure. It is surprised to note that the trial Court has said nothing reflected in the photocopy of page No.97 to show that it is the copy of the Ex.P.46, in spite of the fact that, the seal of Krishna Sweets and signature of the witnesses are found. Therefore, this Court finds that there is factual error in the finding of the trial Court and the reasoning for rejecting the plea of prosecution to mark page 97. Hence, petition is allowed.

7. This Court also wish to add that mere admitting this document cannot be construed as proof of the facts which the prosecution likely to project. The prosecution shall take necessary steps to introduce those documents through appropriate witnesses and prove its contents in the manner known to law.

AT

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The learned VIII Additional Special Judge for CBI Cases,
Chennai
+1cc to Mr.R.Ganeshkumar, Advocate SR.No.2605
+1cc to Mr.SwamiSubramanian, Advocate Sr.n0.2518

LRS (CO)
sm:13.2.2018

Crl.R.C.No.48 of 2018