

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.11021 of 2013
and MP.No.1 of 2013
and MP.No.1 of 2015

The Intelligence Officer,
Narcotic Control Bureau
Chennai Zonal Unit,
Chennai - 90.

.... Petitioner/Complainant

Vs.

1. Sathik Raja @ Sony

2. Shaikusman @ shaik

...Respondents/Accused
1 and 2

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the finding given in PW2's chief examination dated on 26.02.2013 in C.C.No.18 of 2011 on the file of the Learned Judge Principal Spl. Court for NDPS Act Cases, Chennai, and direct him to permit the petitioner to mark the documents produced at the time of trial in pursuance of Section 53 A and S.66, of the NDPS Act, and the law laid down by Supreme Court.

For Petitioner : Mr.N.P.Kumar,
Special Public Prosecutor
for Central Government

For Respondents : Mr.Ganesh Rajan

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O R D E R

This petition has been filed by the complainant to set aside the finding given in PW2's chief examination dated on 26.02.2013 in C.C.No.18 of 2011 on the file of the Principal Spl. Court for NDPS Act Cases, Chennai, and direct the said Court to permit the petitioner to mark the documents produced at the time of trial in pursuance of Sections 53 A and 66 of the NDPS Act.

2. The learned Special Public Prosecutor has submitted that in the course of trial when the PW2 was examined, in his chief examination, he has stated that he issued summons to one Iyappan, driver of the vehicle and to one Shake Ali, owner of

the vehicle and recorded their statements and in that statements, PW2 also affixed his signature. He further submitted that when the prosecution attempted to mark the statements of said Iyappan and Shake Ali, the Trial Judge refused to mark those statements. He further submitted that those statements are material evidence for proving the prosecution case and therefore he requests to set aside the order passed by the learned Trial Judge refusing to mark those documents as exhibits and direct him to permit the petitioner to mark the said documents as exhibits.

3. The learned counsel for the respondents has submitted that those documents are not admissible in evidence and hence, the learned trial Judge has rightly rejected the requests made by the prosecution and therefore he prayed to dismiss this petition.

4. At this juncture, it would be relevant to refer to the decision in *Bipin Shantilal Panchal vs. State of Gujarat & Another*, 2001 (2) Supreme 65 wherein three Judges Bench of the Honourable Supreme Court in paragraphs 11 to 16 has observed as follows:-

"11. We are compelled to say that the trial judge should have shown more sensitivity by adopting all measures to accelerate the trial procedure in order to reach its finish within the time frame indicated by this Court in the order dated 31.3.2000 since he knew very well that under his orders an accused is continuing in jail as an under-trial for a record period of more than seven years. Now, we feel that the Additional Judge, whether the present incumbent or his predecessor, was not serious in complying with the directions issued by this Court, though the parties in the case have also contributed their share in bypassing the said direction.

12. As pointed out earlier, on different occasions the trial judge has chosen to decide questions of admissibility of documents or other items of evidence, as and when objections thereto were raised and then detailed orders were passed either upholding or overruling such objections. The worse part is that after passing the orders the trial court waited for days and weeks for the concerned parties to go before the higher courts for the purpose of challenging such interlocutory orders.

13. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not

proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision

against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

16. We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.''

5. From the aforesaid decision of the Hon'ble Supreme Court , it is clear that whenever an objection is raised during evidence taking stage regarding the admissibility of any document or oral evidence, the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit and subject to such objections to be decided at the last stage in the final judgment. In spite of the specific directions issued by the Hon'ble Supreme Court in para 16 of the aforesaid decision, the Trial Judge has not followed the aforesaid procedure. Hence the order passed by the Trial Judge is liable to be set aside.

6. In the result, this petition is allowed. The order passed by the Learned Principal Special Court for NDPS Act, cases, Chennai in C.C.No.18 of 2011, refusing to mark the aforesaid documents while recording the evidence of PW2 dated 26.02.2013 is set aside. The Trial Judge is directed to mark the objected documents tentatively as exhibits subject to such objections as per the procedure laid down by the Hon'ble Supreme Court in the aforesaid decision and dispose of the case, in accordance with law. Consequently, connected miscellaneous petitions are closed. No costs.

Msrm

Sd/-

Assistant Registrar(CS-CO)

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Sub Assistant Registrar

To

1. The Judge,
Principal Spl. Court for NDPS Act Cases,
Chennai.

2. The Intelligence Officer,
Narcotic Control Bureau
Chennai Zonal Unit, Chennai - 90.

3.The Public Prosecutor,
High Court, Madras.

KR/29/10/18

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