



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:20.02.2018

Pronounced on: 22.02.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.(MD) No.17301 of 2017

and

Crl.M.P.(MD).No.11351 of 2017

Satham Hussain @ Karuppu Satham Hussain ... Petitioner/
Accused No.1

-Vs-

State rep. through

The Assistant Commissioner of Police,
Social Justice and Human Rights Unit,
Madurai City.

... Respondent/
Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records pertaining to the order passed by the learned III Additional District and Sessions Judge and Special Court for PCR Cases, Madurai in Cr.M.P.No.2247 of 2017 in Spl.S.C.No.17 of 2016, dated 29.11.2017 and set aside the same.

(Prayer amended vide order of this Court, dated 22.02.2018 passed in Memo USR.No.513/2018)

For Petitioner : Mr.S.M.A.Jinnah

For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Govt. Advocate (Crl.Side)

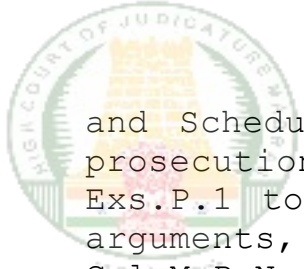
O R D E R

This Criminal Original petition has been filed by the accused No.1 to set aside the order passed by the learned III Additional District and Sessions Judge (PCR), Madurai in Cr.M.P.No.2247 of 2017 in Spl.S.C.No.17 of 2016, dated 29.11.2017.

2.Heard both sides.

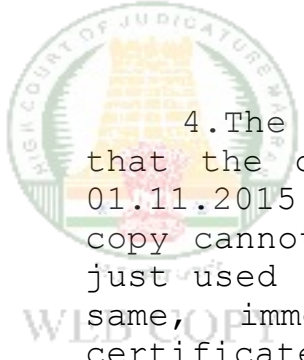
3.The brief facts of the case are as follows:

The petitioner herein is the accused No.1 in Special S.C.No.17 of 2016 and he is facing trial for the charges under Sections 379, 364, 342, 394 r/w 397, 302 I.P.C r/w (2)(v) of Scheduled Castes



and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The prosecution has examined as many as 59 witnesses and marked Exs.P.1 to P.65 and M.Os.1 to 17. When the case was posted for arguments, the petitioner herein has filed an application in CrI.M.P.No.2247 of 2017 under Section 311 r/w 91 Cr.P.C to direct the respondents to produce laptop and hard disk with soft copy of the alleged confession of the petitioner and to recall P.Ws.45 and 51 for further cross-examination. The learned III Additional District and Sessions Judge (PCR), Madurai has dismissed the said application on 29.11.2017. Aggrieved by the same, the accused No.1 has filed the present petition under Section 482 Cr.P.C to set aside the said order.

3.The learned counsel for the petitioner has submitted that the P.W.45 has stated in his evidence that he is working as Special Sub-Inspector and that on 01.11.2015 at about 7.00 a.m, at Mattuthavani Bus-Stand in Madurai, the petitioner herein was arrested by the Inspector of Police and he was enquired and at that time, the petitioner gave a confession and the same was recorded by him on the spot in a laptop and print out has been taken out. He further submitted that since P.W.45 has deposed that the confession of the petitioner has been recorded in the laptop, in order to ascertain that actually whether the confession of the petitioner was recorded in the laptop, the said laptop with hard disk and the soft copy of the confession statement should have been directed to produce before the court. He further submitted that when P.Ws.45 and 51 were examined before the court, some vital questions were omitted to ask during cross-examination with regard to the confession recorded by the P.Ws.45 and 51 and hence, the petitioner has filed an application in CrI.M.P.No.2247 of 2017, but the learned Trial Judge has dismissed the said application without considering the petitioner's request. He further submitted that as per Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, in respect of the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the investigation should be done by the Investigating Officer not below the rank of Deputy Superintendent of Police and as such, the Deputy Superintendent of Police alone can oppose Cr.M.P.No.2247 of 2017, but in that application, objection has been filed by the Inspector of Police, K.Pudur Police Station. He further submitted that since the confession statement of the petitioner has been recorded in the laptop, the said confession statement should have been certified, as mandated under Section 65-B of the Indian Evidence Act, 1872, but in this case, no such certificate has been obtained and hence, the said confession statement is not admissible in evidence and hence, the order passed by the learned Trial Judge in CrI.M.P.No.2247 of 2017 has



4. The learned Government Advocate (Crl.Side) has submitted that the confession statement of the petitioner was recorded on 01.11.2015 and it was not saved in the laptop and as such, soft copy cannot be produced. He further submitted that the laptop was just used for typing the confession statement and after typing the same, immediately, print out was taken and therefore, the certificate which is contemplated under Section 65-B of the Indian Evidence Act is not required. He further submitted that the Inspector of Police has not filed any objection in Crl.M.P.No.2247 of 2017 and it is only the Special Public Prosecutor has filed objection. He further submitted that already sufficient opportunity has been given to the petitioner to cross-examine the P.Ws.45 and 51 and the petitioner has availed the said opportunity and cross-examined them extensively and taking into consideration of all the aforesaid facts, the trial court has rightly dismissed the aforesaid application.

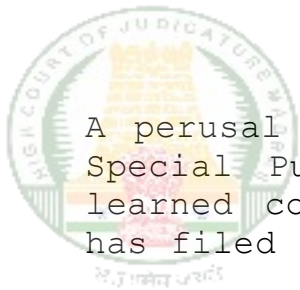
5. The main contention of the petitioner is that since P.W.45 has deposed that the confession statement of the petitioner has been recorded by him in the laptop, in order to show that the said statement was not recorded, the said laptop with hard disk and soft copy have to be produced before the Court by the respondent.

6. A perusal of the evidence of the P.W.45 shows that he has used the laptop only for typing the confession statement and immediately, he has taken print out. He has not stated that the said confession was saved in the laptop or the petitioner's voice was recorded in the laptop. Therefore, it cannot be said that the print out which has been taken from the laptop is an information contained in an electronic record. As per Section 65-B of the Indian Evidence Act, if any information contained in an electronic record, which is printed on a paper, stored, recorded, etc., then only, a certificate is necessary under sub-section 4 of Section 65-B of the Indian Evidence Act for admitting the same in evidence. In this case, as already pointed out that the laptop has been used only as a typewriter and no information has been taken from the said laptop. What was typed in the laptop has been taken as print out and therefore, the said print out does not require any certificate as contemplated under Section 65-B of the Indian Evidence Act.

7. If the confession statement is recorded through voice recorder, there is some justification, in the request made by the petitioner to direct the respondent to produce the said laptop. Here, it is not the case of the prosecution that the voice of the petitioner has been recorded and therefore, the petitioner's request cannot be considered.

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

8. In the typed set filed by the petitioner, a copy of the objection filed in Crl.M.P.No.2247 of 2017 also has been enclosed.



A perusal of the said objection shows that it was signed by the Special Public Prosecutor and therefore, the contention of the learned counsel for the petitioner that the Inspector of Police has filed objection is not acceptable.

9. For the aforesaid reasons, the order passed by the learned Trial Judge, rejecting the petitioner's request to direct the respondent to produce the laptop with hard disk and soft copy and also to recall P.Ws. 45 and 51 does not require any interference by this Court. Therefore, this petition is liable to be dismissed.

10. In the result, this petition is dismissed. The order passed in Cr.M.P.No.2247 of 2017 in Spl.S.C.No.17 of 2016, dated 29.11.2017, by the learned III Additional District and Sessions Judge (PCR), Madurai, is confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The III Additional District and Sessions Judge and Special Court for PCR Cases, Madurai.
2. The Assistant Commissioner of Police, Social Justice and Human Rights Unit, Madurai City.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.S.M.A.Jinnah, Advocate Sr.No.50678

VS

VB/JC/SAR1/26.03.2018/4P/5C

order made in

Cr1.O.P. (MD) No.17301 of 2017
22.02.2018