

**THE HON'BLE DR.JUSTICE SHAMEEM AKTHER**

**CRIMINAL REVISION CASE NO.237 OF 2018**

**ORDER:**

This revision is filed by the petitioner-State under Sections 397 and 401 Cr.P.C. challenging the order, dated 08.11.2017 in CrI.M.P.No.299 of 2017 in CrI.A.No.54 of 2016 on the file of the IX Additional District and Sessions Judge, Chittoor, wherein the application filed under Section 391 Cr.P.C. to send for the documents and receive the same as additional evidence by marking them as exhibits, was dismissed.

2. Heard learned Assistant Public Prosecutor representing the petitioner-State, learned counsel for the respondents-accused and perused the record.

3. Learned Assistant Public Prosecutor representing the petitioner-State would submit that the order passed by the Court below is contrary to law and facts and circumstances of the case. The documents, which were sought to be marked by way of additional evidence were seized during the course of investigation and part of the case diary. These documents were not filed along with charge sheet before the learned Magistrate. The appellate Court ought to have called for the records and allowed the petitioner-State to adduce further evidence for marking of those documents. The Court of Session observed that the documents intended to be marked are not available in the Court file. When the documents are seized in the course of investigation and part of case diary, the same have to be received as evidence under Section 391 Cr.P.C.

4. On the other hand, learned counsel appearing for the respondents-accused opposed the relief sought for by the petitioner-State in the revision.

5. As per the submissions made by both sides on record, the documents proposed to be marked are not filed before the trial Court as well as before the Court of Session, which dismissed the impugned application. The allegation is that the alleged offences said to have been committed 20 years back. The respondents-accused were acquitted by the learned Magistrate, vide judgment, dated 20.02.2015 in C.C.No.62 of 2009. Some of the respondents-accused have retired from service. When the prosecution wanted to mark certain documents, they could have filed those documents before the Court and sought intervention of the Court to mark them. Till date, the documents are not available before the Court of Session. There is no purpose in allowing the petition. The learned Sessions Judge while dealing with the matter, had elaborately dealt with and answered the submissions raised on behalf of the petitioner-State. There is also inconsistency with regard to seizure of subject documents and submitting the same before the Court of Judl. Magistrate of I Class. Had the documents are available on record of the Court and the petitioner-State had explained the circumstances for not marking those documents, the request of the petitioner-State could have been considered. When the documents are not available, no permission can be granted to receive the documents. Therefore, the revision is devoid of merit, and further in view of the mandate given under Section 397 (2) Cr.P.C., this petition is not maintainable and is liable to be dismissed.

6. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any pending in this Revision shall stand closed.

**DR.SHAMEEM AKTHER, J**

**DATED: 19-03-2018.**

Hsd

