

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4933 of 2019

and

Crl.M.P.No.2888 of 2019

A.Viswanathan

... Petitioner

Vs.

1.The State rep. By:
The Inspector of Police,
CCIW (CID), Namakkal Unit,
Namakkal, Namakkal District
2.V.Govindasamy
3.B.Raja
4.S.Palanisamy

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order dated 22.01.2019 made in C.M.P.No.8112 of 2018 in C.C.No.61 of 2009 on the file of Judicial Magistrate, Paramathy by allowing this petition.

For Petitioner : Mr.R.Marudhachalamurthy

For RR1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

For RR2 to 4 : No Appearance

ORDER

This petition has been filed as against the order passed in C.M.P.No.8112 of 2018 in C.C.No.61 of 2009 dated 22.01.2019 on the file of the learned Judicial Magistrate, Paramathy thereby allowing the application filed under Section 311 Cr.P.C. by the first respondent herein.

2. Mr.R.Marudhachalamurthy, the learned counsel for the petitioner submitted that the petitioner was charged for the offences under Sections 120(b), 408, 467, 471, 477(a) I.P.C. in C.C.No.61 of 2009 and arrayed as second accused. The first respondent complainant filed a petition under Section 311 Cr.P.C. to receive the forensic lab report of an expert dated

24.07.2009 along with the document sent for comparison and mark the same by the Scientific Assistant Grade-I, document expert. The said application was allowed. He further submitted that the prosecution examined 57 witnesses and marked 733 documents as Exhibits. Thereafter the prosecution witness was closed as early as on 22.01.2018 itself. The reasons stated in the petition under Section 311 Cr.P.C. is nothing but only to fill up the lacuna and it cannot be allowed. He further submitted that the prosecution filed this petition after a period of ten years that too after examining the investigation officer. He further submitted that the person who proposed to be examined is not a witness mentioned in the list of witnesses and no statement was recorded from him. Therefore, the person cannot be examined as prosecution witness and as such he prayed to set aside the order dated 22.01.2019.

3. Per contra, Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the first respondent submitted that after examining PW17, on perusal of police case dairy, FSL report of expert along with documents sent for comparison which is material documentary evidence is found and produced and as such the document has to be marked before the trial court, since it is nothing but FSL expert report. The said document has to be marked only through the person who gave opinion. Therefore, if the person is examined and the said document is marked, there is absolutely no prejudice would be caused to the petitioner. Therefore, he sought for dismissal of this petition.

4. Heard, Mr.R.Marudhachalamurthy, the learned counsel for the petitioner and Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the first respondent.

5. The petitioner is arrayed as second accused and he has been charged for the offences under Sections 120(b), 408, 467, 471, 477(a) I.P.C. in C.C.No.61 of 2009. The prosecution examined 53 witness and marked 733 documents as Exhibits. PW17, who is an enquiry officer under Section 81 of Tamil Nadu Cooperative Societies Act, 1983, and upon his enquiry report the case has been registered by the first respondent herein. Now prosecution filed the present petition under Section 311 Cr.P.C. to mark the forensic lab report of expert through the expert along with documents sent for comparison. It is also seen that the entire criminal proceedings has been initiated only on the basis of enquiry report under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 and the proposed document to be marked by the prosecution is nothing but FSL expert report filed by PW17, Enquiry Officer. Therefore, no prejudice would be caused to the petitioner if it is allowed to be marked by the expert. Therefore this Court finds no irregularity or infirmity in the order passed by the court below.

6. Accordingly, this Criminal Original Petition is dismissed. However, the first respondent is permitted to mark only the forensic lab report dated 24.07.2009 and the signature found in the document which was sent for comparison through the Scientific Assistant Grade-I (document expert) without main document which was sent for comparison. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Inspector of Police,
CCIW (CID), Namakkal Unit,
Namakkal, Namakkal District
2. The Judicial Magistrate,
Paramathy
3. The Additional Public Prosecutor,
High Court of Madras

+1cc to Mr. R.Marudhachalamurthy, Advocate, S.R.No. 30805

सत्यमेव जयते

CrI.O.P.No.4933 of 2019 and
CrI.M.P.No.2888 of 2019

SS (CO)
GN (23/05/2019)

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