

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2019

CORAM

THE HON`BLE MR.JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P.No.6998 of 2019
and Crl.M.P.No.3860 of 2019

V.Venkatesan

... Petitioner/Accused

Vs

State Represented by
Deputy Superintendent of Police
Vigilance and Anti Corruption Detachment
Erode.
(V&AC Erode Cr.No.8/AC/2005/ER)

... Respondent /Complainant

COMMON PRAYER: Criminal Original Petitions filed under Section 482 Cr.P.C to call for the records in Crl.M.P.No.639 of 2019 in Special C.C.No.4 of 2015 dated 26.02.2019 on the file of the Chief Judicial Magistrate, Erode and set aside the same.

For Petitioner : Mr.R.Karthikeyan

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

O R D E R

The petition has been filed to set aside the order dated 26.02.2019 passed by the learned Chief Judicial Magistrate, Erode, in Crl.M.P.No.639 of 2019 in Special C.C.No.4 of 2015, dismissing the petition filed under Section 294 Cr.P.C., seeking to admit the document dated 24.03.2017.

2.The petition has been filed by the petitioner/accused, who is facing trial for the offences under Sections 7 and 12 (2) r/w 13(1)(d) of the Prevention of Corruption Act.

3.The case of the prosecution is that the petitioner/accused demanded and accepted a sum of Rs.15,000/- from the defacto complainant for issuance of No Objection Certificate.

4.The petitioner had raised a defence stating that he is not the competent authority to issue No Objection Certificate and that the defacto complainant/P.W.2 had excavated a trench in S.F.No.130/2, to carry out the illegal tapping of water from PWD, Kugular Branch Canal and thereby had directed the defacto complainant to close the said trench, stating that unless the trench is closed, the "No Objection Certificate" will not be issued by the competent authority. Having grudge over the same, the defacto complainant had given false complaint against the petitioner/accused as if the petitioner claimed money. After the trap on 13.05.2005, the Vigilance Officials had asked the PWD Officials to issue "No Objection Certificate" to the defacto complainant. The Officer, one Mr.P.Ramasamy, Junior Engineer, who had taken charge in the place of the petitioner/accused had also reiterated that unless the trench excavated by the defacto complainant is closed, he could not recommend for "No Objection Certificate" to the defacto complainant, by his letter dated 25.05.2005 and that only after closing of the trench, P.W.5 Mr.Ragunathan, had recommended for No Objection Certificate to the defacto complainant on 11.06.2005.

5.The factum was also spoken by the Investigating Officer, Mr.Balashanmugam, who was examined as P.W.17 and thereafter, the petitioner to substantiate his defence had applied for copy of the said documents from the office of the Assistant Executive Engineer, Irrigation Sub Division, Gobi, under the RTI Act and he was issued with a reply by letter dated 24.03.2017, containing the (i) letter No.Ko 2/2005 dated 25.05.2005 by the Assistant Executive Engineer, Irrigation Sub-Division PWD, WRO, Gobichettipalayam (ii) letter No.696/2005/Ko 50 dated 25.05.2005 by Assistant Executive Engineer, Irrigation Sub-Division PWD, WRO, Gobichettipalayam and (iii) letter No.696/2005/Ko 50 dated 11.06.2005, since the above documents were obtained from the government Officials, by way of request under the RTI Act, the petitioner claiming the documents to be public documents had filed a petition seeking to admit them without any formal proof as per Section 294 Cr.P.C.,

6.The respondent had filed a counter, before the trial Court denying the genuineness of the documents and thereby objecting to admit the documents under Section 294 Cr.P.C., stating that the right of the accused to produce any documents would accrue to him only after the accused enters into defence and after recording the evidence by the prosecution.

7.The learned trial Judge after hearing both sides had dismissed the petition stating that,

"Heard both side. Records perused. The petitioner/accused No.1 has come forward with the present application by invoking the provisions of

Section 294 Cr.P.C. Calling upon the respondent/complainant to admit the genuineness of the document filed along with the application. The respondent/complainant is not willing to admit the genuineness of the document. In fact in the counter statement the respondent has raised doubt about the genuineness of the document.

In view of the categorical stand taken by the respondent in the counter statement, this Court decides that the application cannot be allowed.

In the result this this application is dismissed."

8.Mr.R.Karthikeyan, learned counsel appearing for the petitioner would reiterate that the documents obtained under RTI Act are public documents and as per Section 294 Cr.P.C., no formal proof is required for marking the documents by way of defence. The learned counsel for the petitioner/accused in support of his contention would rely on the Judgments of this Court reported in (2009) 4 MLJ (Crl) Rakkappan Vs. State rep. By Inspector of Police, Cherambadi Police Station, Uthagamandalam District and 2011-1-LW (Crl) 335 S.Ramkumar Vs. State and Ors., and would submit that the documents sought to be filed are documents issued by Government Departments and that the trial Judge ought to have accepted it and in the event of refusing to accept the documents, by way of Section 294 Cr.P.C., the trial Court should have permitted the petitioner/accused to summon and mark the documents either by way of filing petition under Section 91 Cr.P.C., or under Section 311 Cr.P.C., taking into consideration the appropriate stage of the trial.

9.The learned Additional Public Prosecutor would submit that the Section 294 Cr.P.C., applies for acceptance of documents only when the genuineness of the documents is accepted by the respondent and further there is a proviso to the Section which gives a discretion to the trial Judge regarding acceptance of proof of signature in the said document. He would submit that though the document is stated to have been furnished to the petitioner by Government Officials pursuant to an application being made under the RTI, the documents cannot be treated by public documents and that they are only photo copies of the documents. Further there is a mandate under Section 294 Cr.P.C., that the pleader for the prosecution or the accused shall be called upon to admit or deny the genuineness of each such document and such document can be accepted, only when the genuineness of the document is not disputed. In this case, the respondent has doubted and disputed the genuineness of the documents sought to be accepted and thereby the trial Court had rightly dismissed the petition. He would further submit that no details have been stated by the petitioner, what exactly was the

request made in the RTI application and what were the documents furnished. He would also submit that even in the Judgments relied on by the petitioner, this Hon'ble Court has held that the documents can be marked without formal proof only when the genuineness is not disputed and when a dispute has been raised by the prosecution, with regard to the genuineness of the documents sought to be marked, the petitioner can only be permitted to mark the documents in accordance with law and they cannot straight away mark the documents, by taking into consideration Section 294 Cr.P.C.,.

10. This Court deems it necessary to refer to Section 294 Cr.P.C.,

"294. No formal proof of certain documents:

(1) Where any document is filed before any court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

PROVIDED that the court may, in its discretion, require such signature to be proved."

11. In (2009) 4 MLJ (Crl) Rakkappan Vs. State rep. By Inspector of Police, Cherambadi Police Station, Uthagamandalam District, it has been held hereunder:

"6. It is ex facie and prima facie clear that when either of the parties to the criminal proceedings, if wants to file some document, they are at liberty to file such documents and call upon the other side either to admit or deny the genuineness of each such document. It is open for the other side to either accept or deny the genuineness of the document. If it is denied by the opposite party, the party, who wants to rely upon it should resort to the normal procedure of marking the document. As such, Section 294 Cr.P.C., is not the be- all and end-all of the right to adduce evidence before Court and either of the parties to criminal proceedings to put forth their documents before the Court, there are

other modes of relying on their documents for being considered by the Court. Dehor, the method contemplated under Section 294 Cr.P.C.,. It is quite obvious and axiomatic that through the witnesses, either the prosecution or the defence could mark the documents. Even during cross-examination, documents could be marked by virtue of Section 145 of the Indian Evidence Act. In this case, simply because the Public Prosecutor objected and did not signify his consent relating to the genuineness of the documents, the lower Court was not justified in dismissing that application. The lower Court should have allowed the documents to be filed in Court."

12. Further in 2011-1-LW(Crl)335 S.Ramkumar Vs. State and Ors., this Court has held,

"13. The trial Court has given three reasons for rejecting the application which are denied by this Court on the following grounds;

(i) The petitioner has approached the Court below in a belated state: As already stated, the delay cannot be a reason to reject the application, the provision is resorted only with the object of finding out the truth. Therefore, the delay may not be a reason to reject the application.

(ii) The petitioner is only trying to protract the case: In my considered view, this may be avoided by giving a chance to call the defence witness with a specific direction to examine, within specified time without any adjournments.

(iii) When the prosecution is not objecting the document with formal proof, Under Section 294 of Code of Criminal Procedure the same is to be invoked: We have no quarrel with the provision Under Section 294 of Code of Criminal Procedure. However, the purpose for which a witness is called under Section 311 of the Code has to be looked into. The petitioner is a Chartered Accountant and his house has been searched and an Officer of the respondent has seized certain documents. Admittedly, the Investigating Officer has not examined the said Officer and the documents were also not relied on by the prosecution. Therefore, merely marking the document Under Section 294 of Code of Criminal Procedure is not enough where the petitioner wants to examine certain aspects of such search and seizure to prove his defence. Therefore, invoking the provision Under Section 294 of the Code will serve only a limited purpose

but examination of the witnesses is for a wider purpose. Therefore, I am of the considered view, an opportunity may be given to the petitioner to examine the officer who has conducted the search and seizure and also, the persons present at the time of conducting the search."

13. In the Full Bench Judgment of the Hon'ble Allahabad High Court in *Saddiq and others, Vs. State* reported in 1981 CrL.J. 379,

"4. The word 'any' appearing before the word 'document' means an indefinite number and makes sub-section (1) of Section 294 Cr.P.C., applicable to all documents filed by the prosecution or the accused irrespective of their nature and character. Sub-section (1) of Section 294 Cr.P.C., therefore, requires that particulars of all documents, which are to be filed by the prosecution or the accused, must be mentioned in a list and the opposite party, or their pleaders, shall be called upon to admit or deny the genuineness of such documents.

5. It is clear from a plain reading of sub-section (3) of Section 294 Cr.P.C., that it is applicable only to those documents filed by the prosecution or the accused under sub-section (1) of Section 294 Cr.P.C., whose genuineness is not disputed by the opposite party and such documents may be read in evidence under that sub-section. If the genuineness of a document filed by the prosecution or the accused under sub-section (1) of Section 294 (3) of Section 294 Cr.P.C., does not apply and such a document cannot be read in evidence under that sub-section.

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13. It may be mentioned that even if the genuineness of a document filed by the prosecution or the accused under sub-section (1), Cr.P.C., is not disputed by the opposite party the Court may require the proof of the signature of the person by whom it purports to be signed under the Proviso to sub-section (3) of Section 294 Cr.P.C.,. In such a case the signatory of the document must appear in Court and prove his signature and the document will thereafter be read as substantive evidence."

14. In a later decision of the Hon'ble Apex Court reported in (2016) 15 SCC 485 *Shamsher Singh Verma Vs. State of Haryana*, it has been held that endorsement regarding admission or denial

can be made by the counsel for the opposite party seeking to produce the document under Section 294 Cr.P.C., and once it is denied by the other side, the party seeking to produce it, has to prove it, in the manner known to law by letting in evidence.

15. In this case, so far as the document sought to be marked is concerned, is a letter dated 24.03.2017, stated to have been received by the petitioner by way of a reply under the RTI Act with enclosures containing copies of three letters of the Assistant Executive Engineer, Irrigation Sub-Division PWD, WRO, Gobichettipalayam, and that the details of the documents sought to be marked are in the (i) letter No.Ko 2/2005 dated 25.05.2005 by the Assistant Executive Engineer, Irrigation Sub-Division PWD, WRO, Gobichettipalayam (ii) letter No.696/2005/Ko 50 dated 25.05.2005 by Assistant Executive Engineer, Irrigation Sub-Division PWD, WRO, Gobichettipalayam and (iii) letter No.696/2005/Ko 50 dated 11.06.2005.

16. As rightly pointed out by the learned Additional Public Prosecutor no particulars are available with regard to what was the information sought for in the application under the RTI Act and what was the reply given by the concerned authorities with regard to the same and in such circumstances, it would be unsafe to accept the documents without formal proof and thereby the trial Court has rightly dismissed the petition.

17. In view of the above discussion, I do not find any infirmity in the order passed by the learned trial Judge. At the same time, while dismissing the Criminal Original Petition, this Court is of the opinion that non acceptance of the document under Section 294 Cr.P.C., does not preclude the party requiring to mark it in the manner known to law at the relevant stage of trial and thereby liberty may be afforded to the petitioner to mark the documents in the event of petition being filed, invoking the appropriate procedure taking into consideration the stage of trial.

18. With the observation, the Criminal Original Petition stands disposed of. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Erode.

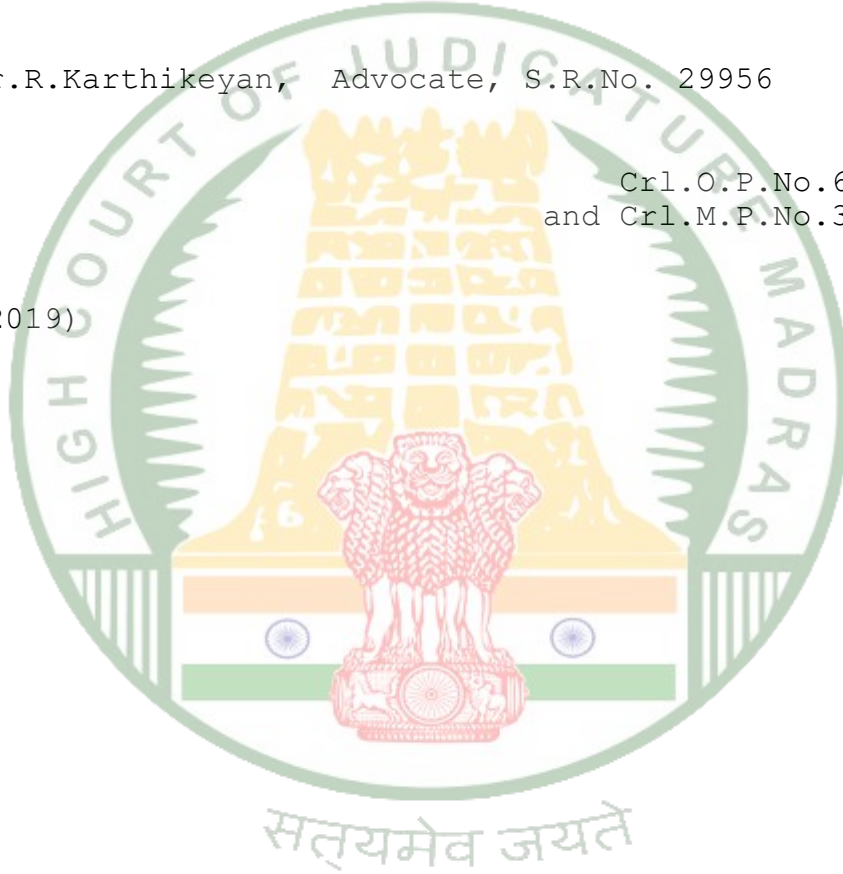
2.The Deputy Superintendent of Police
Vigilance and Anti Corruption
Detachment Erode.
(V&AC Erode Cr.No.8/AC/2005/ER)

3.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No. 29956

Crl.O.P.No.6998 of 2019
and Crl.M.P.No.3860 of 2019

KJ(CO)
GN(02/05/2019)



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