

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.OP.Nos.10379 & 10705 of 2019
and
CRL.M.P.Nos.5369 & 5494 of 2019

1.Panneerselvam
2.P.Anbalagan
3.P.S.Arumugam @ Irumbu Arumugam(died)
4.Ragavan @ Seeyapadi Ragavan
5.Natarajan
...Petitioners
in both Crl.O.Ps

Vs.

The State rep.by,
The Inspector of Police,
Crime Branch C.I.D
Cuddalore.
(Crime No.301 of 2005 in
Bhuvanagiri P.S)
...Respondent
in both Crl.O.Ps.

PRAYER in Crl.O.P.No.10379 of 2019 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order passed by the learned Principal Sessions Judge, Cuddalore in Crl.M.P.No.955 of 2019 dated 18.03.2019 in S.C.No.123 of 2016.

PRAYER in Crl.O.P.No.10705 of 2019 : Criminal Original Petitions filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order passed by the learned Principal Sessions Judge, Cuddalore in Crl.M.P.No.1234 of 2019 dated 18.03.2019 in S.C.No.123 of 2016.

For Petitioners : Mr.G.Pugazhenth
in both Crl.O.Ps.
For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor
in both Crl.O.Ps.

Mr.M.Krishnamoorthy
For Defacto Complainant
in both Crl.O.Ps.

COMMON ORDER

These petitions have been filed challenging the order passed by the Court below in an application filed under Section 311 of Cr.P.C by the prosecution permitting the prosecution to mark a confidential report of LW-48 and permitting the prosecution to reconstruct the case record and mark it as a secondary evidence.

2. The petitioner is facing trial before the Court below for the offences under Sections 147, 341, 302 r/w 34 and 302 r/w 201 of IPC. After the completion of the investigation, the respondent police filed a final report on 31.08.2015 and the trial commenced on 29.10.2018. P.W.1 and P.W.2 were examined on the same day and they were also cross examined. On 12.11.2018, P.W.3 to P.W.5 were examined in chief and cross examined. Subsequently, P.W.6 to P.W.15 were examined and all these witnesses have also been cross examined.

3. At this stage, the prosecution filed an application under Section 311 of Cr.P.C to examine four persons as additional witnesses and to mark xerox copies of certain documents through them. The document that was sought to be marked was the confidential report prepared by LW-48. The petitions were allowed by the Court below and aggrieved by the same, the present petitions have been filed before this Court.

4. The learned counsel for the petitioner submitted that a confidential report which has nothing to do with the present case can never be marked before the court. In order to substantiate his arguments, the learned counsel relied upon the judgment of the Delhi High Court in (Ashok Chawla V. Ram Chander Garvan, Inspector CBI) reported in 2011 CriLJ 2353. The learned counsel further submitted that in-so-far-as marking of the copies of the documents as secondary evidence in view of the original documents having been lost, the same can gone and at the time of marking, and it is always left open to the petitioner to raise the objection regarding the admissibility, relevancy and proof.

5. The learned Additional Public Prosecutor appearing on behalf of the respondent submitted that the petitioner had a hand in the original documents missing from the Court since his relative is working in the same Court and it was, they who had concealed or taken away the original documents. The confidential report pertained to those details and therefore, in order to justify the marking of the copies of the documents as secondary evidence, the prosecution wanted to mark the confidential report before the Court. The learned counsel further submitted that the petitioner can always cross examine

the witness through whom the confidential report is marked and therefore, no prejudice will be caused to the petitioner. The learned counsel further submitted in view of the fact that the original documents were missing, the prosecution is always entitled to mark the copies of the documents as secondary evidence.

6. This Court has carefully considered the submissions made on either side and also the materials placed on record.

7. The first issue that arises for consideration is whether the confidential report prepared by LW-48 can be marked before the Court as a document. The confidential reports are documents which are circulated within the department and the fact that they are confidential itself shows that it should not get revealed to the outsiders. Surprisingly, the prosecution wanted to mark this confidential report as a document to justify the production of the secondary evidence due to the fact that the original records were lost.

8. In the first place, the confidential report will have no bearing on the merits of the case. Secondly, the moment, the document is marked, it ceases to be a confidential document. If questions are put on the confidential document before the Court, it will lead to a very embarrassing situation and the whole sanctity behind the confidential report will be lost.

9. If at all, the police wanted to inform the Court regarding any information collected by them on the missing records, it could always been done by submitting the report in a sealed cover and the Court can always look into it and take action independently with regard to the missing records against the concerned persons. Therefore, in the considered view of this Court, the confidential report cannot be marked in a criminal case and the order passed by the Court below permitting the prosecution to mark the confidential report of Lw-48 is totally unsustainable. सत्यमेव जयते

10. The judgments cited by the learned counsel for the petitioner deals with a case, where an opinion of a Investigating Officer was sought to be given in evidence and the Delhi High Court, in the judgment referred supra, held that these opinions are not statement of facts and they are not relevant. These opinions cannot be made relevant by resorting to Section 45 of the Evidence Act since they will not satisfy the requirements of the said provision. The Delhi High Court ultimately went on to hold that the accused who had sought for the final opinion of the Investigating Officer does not have a right to claim every document that is available in the police file.

11. In-so-far-as the second issue is concerned, the prosecution can always mark the copies of the documents where the originals are lost, as secondary evidence. If this is not permitted, the entire exercise of investigation will be lost and the accused person who is capable of getting the original records lost through some means can easily escape from a criminal case by doing so. This ultimately will result in failure of Justice. Therefore, the Court below was perfectly right in permitting the prosecution to reconstruct the case files and marking them as secondary evidence. This Court does not find any infirmity or illegality in-so-far-as this portion of the order is concerned and there are no grounds to interfere with the same.

12. In the result, Crl.O.P No.10379 of 2019 is allowed and the order passed in Crl.M.P.No.955 of 2019 dated 18.03.2019 is set aside and the confidential report prepared by LW-48 cannot be marked in the pending case. Crl.O.P No.10705 of 2019 is dismissed and the order passed by the Court below in Crl.M.P.No.1234 of 2019 is sustained. The Court below is directed to complete the proceedings in SC.No.123 of 2016, within a period of three months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petitions are closed.

sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

jas/uma

To

1. The Principal Sessions Judge,
Cuddalore.
 2. The Inspector of Police,
Crime Branch C.I.D
Cuddalore.
(Crime No.301 of 2005 in
Bhuvanagiri P.S)
 3. The Public Prosecutor,
High Court, Madras.
- +2cc to Mr.G.Pugazhenth, Advocate, sr. no.47934,47933

CRL.OP.Nos.10379 & 10705 of 2019
and

CRL.M.P.Nos.5369 & 5494 of 2019

SSD(CO)

RMP(10/07/2019)