

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.08.2019
CORAM
THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.23071 of 2019

Raj Kumar

...Petitioner/Accused

.Vs.

Assistant Commissioner of Police,
Cyber Crime Cell, CCB,
Egmore, Chennai.

...Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the Impugned Dismissal Order in Crl.M.P.No.664 of 2019 in C.C.No.520 of 2008, dated 28.06.2019 on the file of Hon'ble Judicial Magistrate at Alandur and set aside the same and permit the petitioner to recall PW25 Mr.Sudhakar the Investigating Officer for the purpose of further cross examination and marking of the document runs into 537 pages filed by the Respondent/Complainant on 25.01.2019.

For Petitioner : Mr.S.Xavier Felix

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

For Intervenor : Mr.Nagesh Babu

O R D E R

This petition has been filed against the dismissal of the application filed under Section 311 of Cr.P.C to recall PW25 and to mark a document through him.

2.The petitioner is facing Trial before the Court below for an offence under Section 304(A) of IPC. The prosecution had examined PW1 to PW25 and the defence had examined DW1 to DW5. At that stage, the petitioner wanted a document consisting of 534 pages of case sheet to be marked through PW25, who is the investigating officer. This application was dismissed by the Court below on the ground that the petitioner ought to have marked the document when PW25 was in the box and filing such a petition at such a belated stage, more particularly after five witnesses were examined on the side of the defence, clearly shows that the petitioner wants to drag on the proceedings. The Court below has also given a finding to the effect that the entire case sheet which runs to 534 pages is already available with the petitioner since it was given along with the final report.

3.The learned Counsel for the petitioner submitted that the petitioner does not intend to drag on the proceedings and the case sheet running to 534 pages has a lot of relevant in this case and it is required in order to enable the petitioner to effectively defend himself in the case.

4.The learned Counsel appearing on behalf of the defacto complainant submitted that the case has been dragged on for the last 11 years and this is one more attempt made by the petitioner to drag on the proceedings.

5.The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the documents are already available with the petitioner and the same could have been marked at the time of examination of the witnesses on the side of the defence and there is no requirement to recall PW25 for this purpose. The learned Counsel therefore prayed for the dismissal of this petition.

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

7.It is clear from the records and from the submissions made on either side that the document which is a case sheet running to 534 pages was handed over to the petitioner along with the final report. The prosecution has not relied upon the entire case sheet and only 109 pages were marked as a document (Ex.P23 series) through PW2. The petitioner who is shown as an accused wants the entire 534 pages to be marked on the ground that the same is required to rely upon the same and to effectively defend himself in the case. This document is now sought to be marked through PW25, who is the investigating officer.

8.It is made clear even during the time of arguments that PW25 is recalled only for the purpose of marking the case sheet running to 534 pages and no further cross examination will be conducted in this regard.

9.In view of the specific stand taken by the petitioner, this Court is of the considered view that the document which is already available before the Court can be marked through PW25 and ultimately it is left open to the Trial Court to decide upon the relevancy and proof, at the time of the appreciation of evidence. By merely marking this case sheet, no prejudice will be caused to any party.

10.In view of the above, the order passed by the Court below

in Crl.M.P.No.664 of 2019, dated 28.06.2019 is hereby set aside. The Court below is directed to recall PW25 by fixing a date and on the date of his appearance, the petitioner is permitted to mark the case sheet running to 534 pages. The recalling of the witness is confined only for this purpose and nothing more.

11.In the result, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings in C.C.No.520 of 2008 within a period of six weeks from the date of receipt of copy of this order.

jas/vs

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate,
Alandur.
- 2.The Assistant Commissioner of Police,
Cyber Crime Cell, CCB,
Egmore, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D.Nagesh Babu, Advocate, SR.No.73620

+1cc to Mr.S.Xavier Felix, Advocate Sr.75188 [30/08/2019]

Crl.O.P.No.23071 of 2019

Kak(29/08/2019)

सत्यमेव जयते

WEB COPY