

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.02.2019

CORAM
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Crl.R.C.No.1411 of 2018
and
Crl.M.P.No.16397 of 2018

Jayachandran

...Petitioner

Vs.

State, represented by
The Inspector of Police,
Central Crime Branch,
Team-I, Egmore,
Chennai - 600 008.

....Respondent

Prayer:

Criminal Revision Case filed under Section 397 read with 401 of Criminal Procedure Code to call for the records pertaining to the order in Crl.M.P.No.15868 of 2018 in C.A.No.292 of 2017, dated 08.11.2018 on the file of Principal Sessions Judge, Chennai to set aside the same and to receive the report dated 12.03.2008 as additional evidence.

For Petitioner : Mr.A.S. Narasimhan

For Respondent : Mr.R.Ravichandran
Government Advocate [Crl. Side]

O R D E R

This Criminal Revision Case is filed by the petitioner to call for the records pertaining to the order in Crl.M.P.No.15868 of 2018 in C.A.No.292 of 2017, dated 08.11.2018 passed by the learned Principal Sessions Judge, Chennai to set aside the same and to receive the report dated 12.03.2008 as additional evidence.

2.The respondent/police have registered a case in Crime No.561 of 2006 against the revision petitioner and another for the offence under Section 409 read with 34 of IPC. The revision petitioner was arrayed as A2. After completing the investigation, the respondent/police laid a charge sheet before the learned III Metropolitan Magistrate, George Town, Chennai-1. Thereafter, the learned Magistrate has taken the cognizance of

offence in C.C.No.2125 of 2012. The prosecution has proved its case beyond reasonable doubt before the Trial Court. The Trial Court found that the prosecution has proved the case beyond reasonable doubt and convicted the revision petitioner and other co-accused for the offence under Section 409 read with Section 34 IPC. Aggrieved against the judgment in C.C.No.2125 of 2012 passed by the learned III Metropolitan Magistrate, the revision petitioner has preferred an appeal before the learned Principal Sessions Judge, Chennai in C.A.No.292 of 2017. During the pendency of the Criminal Appeal, the revision petitioner herein has filed a petition under Section 391 of Cr.P.C., to receive the order copy dated 12.03.2008 issued by the Presiding Officer, NDPS Court, which was marked as Ex.P25 before the departmental enquiry as additional evidence in the appeal and the same was taken on file in CrI.M.P.No.15868 of 2018 in C.A.No.292 of 2017. The said petition was dismissed by the learned Principal Sessions Judge, Chennai by an order dated 08.11.2018. Aggrieved over the same, the petitioner has come out with the present revision.

3.The learned counsel appearing for the petitioner would submit that in the departmental proceedings, the revision petitioner has filed the order copy dated 12.03.2018 and the same was marked as Ex.P25. Therefore, the original report dated 12.03.2008 was not available in the hands of the revision petitioner. The said document could not be filed and marked before the Trial Court by the revision petitioner during the trial. The prosecution ought to have produced the document before the Trial Court itself due to addition of another accused in the FIR. Moreover, Section 391 CrPC., does not say anything about the limitation to file the document and the delay is not the matter to disallow the petition under Section 391 CrPC. Therefore, the document is necessary and the same can be received as an additional evidence. No prejudice would be caused to the prosecution, if the document is received as additional evidence. Therefore, the reason recorded by the Appellate Court is not in sound and it warrants interference of this Court.

4. Heard both sides and perused all the materials available on record.

5. Admittedly, the case in Crime No.561 of 2006 was registered against the revision petitioner and another for the offence under Section 409 read with Section 34 IPC by the respondent police. After completing the trial, the Trial Court has found guilty of the accused and convicted them for the offence under Section 409 r/w 34 IPC. Against which the petitioner has preferred an appeal in C.A.No.292 of 2017 before the learned Principal Sessions Judge, Chennai. During the pendency of the Criminal Appeal, the revision petitioner has

filed a petition under Section 391 Cr.P.C., to receive the order copy dated 12.03.2008 as additional evidence.

6. On a perusal of the entire materials, it is seen that the order passed by the Presiding Officer, NDPS Court, has not been produced by the petitioner before the Trial Court. Moreover, this Court does not find that the said document absolutely necessary for deciding the case in hand. Therefore, under these circumstances, the revision petitioner can establish his case before the Appellate Court without the document. The Appellate Court is a fact finding Court and it can arrive at an independent finding. Therefore, the petitioner has always right to establish the facts before the Appellate Court. Under these circumstances, the document now sought to be received as an additional evidence is not necessary to decide the case. Without the document in question the Appellate Court can decide the appeal. Therefore, under these circumstances, there is no merit in the revision case and accordingly, the Criminal Revision Case stands dismissed. Consequently, connected CrI.M.P.No.16397 of 2018 is closed.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

msm

To

- 1.The Inspector of Police,
Central Crime Branch,
Team-I, Egmore, Chennai - 600 008.
2. The Public Prosecutor,
High Court, Madras.
- 3.The Principal Session Judge,
Chennai.
- 4.The III Metropolitan Magistrate,
George Town,
Chennai -1.

CrI.R.C.No.1411 of 2018

NRL (CO)

RRS (16/04/2019)