



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.O.P.(MD)No.8364 of 2019

and

CrI.M.P.(MD)No.5222 of 2019

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Thiyagu @ Thiagarajan

:Petitioner/Accused No.1

Vs.

1.The State Rep by
Inspector of Police,
Kottar Police Station,
Kanyakumari District.

:Respondent/Complainant

2.Kutty @ Ramesh

:Respondent/Defacto Complainant

Prayer:Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the impugned 313 (1) Cr.P.C. questioning dated 21.01.2019 made in S.C.No.600 of 2017 on the file of the Principal Sessions Court, Tirunelveli and quash the same.

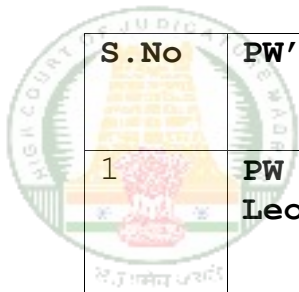
For Petitioner : Mr.Veerakathiravan, Senior Counsel
For M/s.Veera Associates

For Respondents : Mr.K.K.Ramakrishnan
Additional Public Prosecutor for R1

O R D E R

The petitioner herein is figuring as first accused in S.C.No.600 of 2017 on the file of the Principal Sessions Court, Tirunelveli. There are as many seven accused in this case. Charges under Sections 147, 148, 294(b), 341, 302 and 120 B of I.P.C. r/w Section 3 (1) of Tamil Nadu Property Prevention of Damage and Loss Act, 1992 have been framed. The prosecution had adduced evidence and it was followed by examination of the accused under Section 313 (1) Cr.P.C. Examination of this petitioner took place on 21.01.2019. The petitioner had categorized the prosecution evidence as false. The case is now posted for adducing of evidence by the accused. At this stage, this Criminal Original Petition came to be filed. The Registry raised a question regarding maintainability. This Court was of the view that this petition can be heard on merits.

2.The learned senior counsel appearing for the petitioner/A1 submitted that a number of documents were marked as exhibits in an improper way. The counsel appearing for the accused before the Trial Court objected to the marking of such documents then and there. The learned Trial Judge had received the said documents subject to objections. In fact, the objected documents have also been set out in a tabular column for better appreciation to this Court. The tabular column reads as follows:-



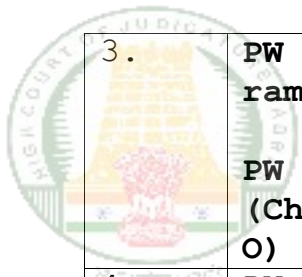
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S.No	PW' S	Document in charge sheet	Exhibit/MO' S MARKED	REMARKS
1	PW 31 - John Leo (I.O)	- Document 71	MO - 20 (OMNI VAN) MO 9 (Kumudham Reporter)	1. Not marked through LW 50 (deoklips @ babu) who is the owner of omni van 2. no form 95 3. different number in photos of omni van Not marked through LW 54 (Krishnasamy) - Kumudham reporter agent
		- Document 62 Document 20 Document 19	Ex. P 39 (Diary of the deceased manikandan) Ex. P 40 (Xerox Copy of the complaint given by mother of deceased) Ex. P 41 (Xerox Copy of complaint given by deceased before Bar Association Nagercoil) Ex. P 42 (Xerox copy of surrender petition of deceased manikandan before JM II Nagercoil)	Given by PW 1 Kutty @ ramesh to PW 31 (I.O) Only Xerox copy was marked Only Xerox copy was marked No court Clerk was cited and enquired



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			Ex. P 45 (Xerox Copy - Acknowledgment card of complaint given by mother of the deceased)	Given by PW 13 (Sekar) to PW 31
		Document 18	Ex. P 47 (Signature obtained from A3 for comparing signature in minutes of siva devasthanam and chit books)	1. Obtained before VAO (LW 46 - Arumugam Perumal Pillai)
		Document 21,22,23	Ex. P 51 (Expert Report - diary , Surrender Petition of deceased)	2. Not followed 311 A of CrPC
			Ex. P 38 (Chit Book)	Not marked through PW 32 (Kumar) who gave expert report
			Ex. P 37 (Call details)	Received from LW 33 (Sivasunderavel)
				Not marked through LW 55 (Hari BSNL officer)
2.	PW 30 Charles (I.O)	-	Document 10	MO 21 (Spot Pics)
			Document 8	Ex.P32 (Motor Vehicle report of omni van
			Document 9	Ex. P33 (Damage report of vehicle by private shop)
				Not marked through LW 47 (Abathu kaatha pillai - Police Photographer)
				Not marked through LW 51 (Nedunchezhiyan - Motor vehicle inspector
				Garage shop owner not listed as witness



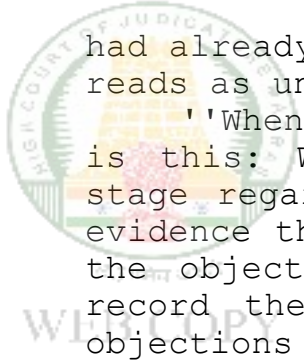
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3.	PW 1 Kutty @ ramesh, PW 30 (Charles -I. O)	-	MO 7 (Photos of bike)	Photos taken by LW 47(Abathu kaatha pillai - Police Photographer)
4	PW 1 (Kutty @ramesh) PW 4 (Vinoth) PW5 (Thirumohan PW 30 (Charles - IO)	Document 26	MO 8 (Negative Photos of omni van)	Not marked through LW 47 Abathu kaatha pillai - Police Photographer

3.The grievance raised by the petitioner is that without deciding on the admissibility of these documents, they had been straight away construed as an indiscriminating evidence and questions have been put to him while examining him under Section 313 (1) Cr.P.C. It is true that the petitioner had taken part in the said 313 (1) examination without raising any objection in the first instance. But that will not come in the way of his pointing out that the entire exercise of examination under Section 313 (1) of Cr.P.C., should have been undertaken only after deciding on the admissibility or otherwise of the documents in question.

4.The learned senior counsel appearing for the petitioner laid emphasis on the expression "any circumstances appearing in the evidence" occurring in Section 313 (1) Cr.P.C. If the objection raised by the accused is sustained, the documents in question will not form part of the evidence against him. Therefore, the accused could not have been questioned on that basis. The senior counsel drew the attention of this Court to the decision of the Honourable Supreme Court reported in [(2015) 1 SCC 496, Nar Sing Vs. State of Haryana] in which the importance of examination under Section 313 (1) Cr.P.C. had been emphasized. Paragraphs 11, 12, 13, 20, 21 and 22 are particularly relevant. The proposition advanced by the learned senior counsel is that by putting questions based on inadmissible documents, the petitioner's rights to fair trial is seriously prejudiced. He therefore insisted that the Trial Court must first decide on the admissibility of the objected documents and only thereafter embark on examination of the accused under Section 313 (1) of Cr.P.C.

5.I am unable to agree with the submission of the learned senior counsel. This is for the reason that the issue on hand as rightly pointed by the learned Additional Public Prosecutor is no longer res integra. As early as in the year 2001, in the decision reported in [(2001) 3 SCC 1(Bipin Shantilal Panchal Vs. State of Gujarat and another)] rendered by the Full Bench of the Honourable Supreme Court, the practice that is to be adopted by the Trial Court

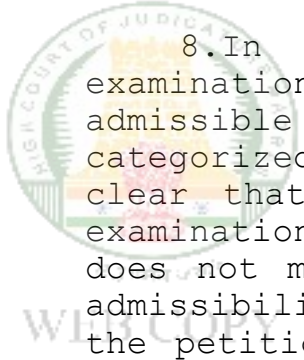


had already been settled in paragraph 14 of the said decision, which reads as under:-

''When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)''

6.It is relevant to mention here that the said case arose out of a case under NDPS Act. When the Honourable Supreme Court had made it clear that if objection is raised during the trial stage with regard to admissibility of any documents or any other material, the Trial Court is to decide on the same only at the last stage in the final judgment. Therefore, it would not be proper for this Court to now hold otherwise. This Court cannot direct the Trial Court to decide on the admissibility of the aforesaid documents before examining the accused under Section 313 (1) of Cr.P.C.

7.At the same, the apprehension raised by the accused's counsel cannot be rest brushed aside. This is because as highlighted in the decision reported in [(2015) 1 SCC 496, Nar Sing Vs. State of Haryana], the importance of statement under Section 313 of Cr.P.C. insofar as accused are concerned can hardly be minimized. The statutory provision is based on rules of natural justice. An accused must be made aware of the circumstances being put against him, so that he can give a proper explanation to meet the case. The concerns of the accused can be addressed by permitting him to give answers in the alternative. There are two situations before the accused. The learned Trial Judge may ultimately hold that the objected piece of evidence is admissible or he may hold that it is inadmissible. This aspect of the matter will be decided only during judgment. If the trial Judge holds that the objected piece of evidence is inadmissible, then the accused need not have any apprehension. If he holds that the objected piece of evidence is admissible, then certainly it is a point of concern for the accused. Therefore, the accused can take both the situations into account and give his answers in the alternative. He can proceed on the assumption that the evidence is admissible and give his explanation accordingly, he can also point out to the court that the evidence is inadmissible and his response may be on that basis. This in my view would certainly accord with the principles of natural justice which is the ultimate object to be served by the aforesaid statutory provision.



8. In this case, the petitioner had taken part in the examination straightaway. He had assumed that objected documents are admissible and he had given his answers accordingly. Of course, he categorized the prosecution as false. This Court would make it clear that merely because the petitioner had taken part in the examination under Section 313 (1) Cr.P.C. without any demur that does not mean that the accused had given up his challenge to the admissibility of the documents in question. It is always open to the petitioner to canvas on the admissibility of his documents at the time of arguments.

9. With these observations, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To:

1. The Principal Sessions Court,
Tirunelveli

2. The Inspector of Police,
Kottar Police Station,
Kanyakumari District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/s. Veera Associates, Advocate SR.No.69485.

Cr1.O.P. (MD) No.8364 of 2019
18.06.2019

CS: (11/07/2019) 6P 5C