



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2019

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.O.P.(MD).No.8862 of 2019

and

CrI.M.P.(MD)No.5631 of 2019

1.Anbazhagan

2.A.Arun @ Arunraj

: Petitioners/Accused No.1 & 2

Vs.

State represented by,
Inspector of Police,
Pavoorchatram Police Station,
Cr.No.218 of 2018,
Tirunelveli District.

: Respondent/Complainant

PRAYER: Petition is filed under Section 482 of Criminal Procedure Code praying to call for the records from the lower Court and to set aside the order passed by the Judicial Magistrate, Ambasamuthiram, Tirunelveli District in his unnumbered Memo D.No.927, dated 12.06.2019 and to proceed the case in accordance with law.

For Petitioners : Mr.V.Kathirvelu
Senior Counsel for K.Prabhu
For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)

ORDER

This petition has been filed challenging the order passed by the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District sending two mobile phones and a compact disc for examination by a forensic expert.

2. The petitioners are the accused, in C.C.No.461 of 2018 on the file of the learned Judicial Magistrate, Thenkasi. They were charged for the offences under Sections 147, 294(b), 342, 448, 352, 354, 506 (ii), 109 IPC, Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 2002 and Section 67(A) of the Information Technology Act, 2000. During trial, the Investigating Officer filed a memo, dated 12.06.2019, to send two mobile phones belong to the petitioners, which were seized during investigation and a compact disc, which have been produced by P.W.1, to a forensic expert, to find out whether the alleged obscene occurrence has been recorded in the cell phone or it was forwarded to the accused and is there any morphing in the compact disc. Accepting the said memo, the learned trial Judge has passed an order for sending the



said mobile phones and compact disc for forensic analysis. Challenging the said order, the present petition has been filed by the petitioners.

3. The learned senior counsel for the petitioners would submit that the order has been passed without giving opportunity to the petitioners and it causes prejudice to them. He would further submit that it is a settled principle of law that an opportunity must be given to the accused before passing any adverse orders against them.

4. Per contra, the learned Government Advocate (Crl.Side) would submit that the trial Court, in order to find out the truth that whether the obscene occurrence has been recorded in the mobile phones belong to the accused and whether the CD produced by P.W.2 is genuine or morphed one, sent them to forensic department. He would further submit that the trial Judge has the power to pass such order under the provisions of the Indian Evidence Act and there is infirmity in the said order.

5. I have considered the rival submissions made on either side.

6. Admittedly, the order impugned in this petition has been passed without giving any opportunity to the petitioner. The petitioners being accused have right of being heard, before passing any order which will cause prejudice to them. In the above circumstances, without going into the merits of the case, since the order has been passed without hearing the petitioners in violation of principles of natural justice, this Court is inclined to set aside the order, dated 12.06.2019 and remand the matter back to the file of the learned Judicial Magistrate, Ambasamudram. The learned Judicial Magistrate is directed to pass a detailed order on merits, after giving opportunity of hearing to the petitioners within a period of one month from the date of receipt of a copy of this order. This Criminal Original Petition is allowed accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate, Ambasamuthiram,
Tirunelveli District.

2. The Chief Judicial Magistrate, Tirunelveli.

3. The Inspector of Police,
Pavoorchatram Police Station,
Tirunelveli District.

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

+1CC TO MR.K.PRABHU, Advocate Sr. No. 71218

CRL.O.P. (MD) .No.8862 of 2019

NS (CO)

TR (04.07.2019) 3P 6C