

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	15.04.2019
Date of Order	10.05.2019

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC(MD)No.220 of 2019
and
Crl.MP(MD)No.3346 of 2019

The State rep. by
Inspector of Police,
CBCID,
Virudhunagar.

: Petitioner/Petitioner/
Complainant

Vs.

1.Murugan
2.Palani @ Palanichamy
3.Santhi

: Respondents/Respondents/
Accused

Prayer: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, against the order, dated 31.10.2017 made in Crl.M.P.No.1576 of 2017 in S.C.No.112 of 2011 by the Fast Track Mahila Court, Virudhunagar at Srivilliputhur.

For Revision Petitioner : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

For Respondents : Mr.A.Thiruvadikumar

O R D E R

This criminal revision is directed against the order, dated 31.10.2017 passed in Crl.M.P.No.1576 of 2017 in S.C.No.112 of 2011 by the Fast Track Mahila Court, Virudhunagar @ Srivilliputhur.

2.According to the petitioner, on 04.11.2006 one Ganesan and his wife Kala, daughters Priya @Santhinee, Veni @ Krishnaveni were murdered by unknown persons and in this connection, a case in Crime No.637 of 2007 has been registered for the offence under Section 302 IPC and after investigation, the Inspector of Police seized certain documents from the place of occurrence and the same were handed over to the learned Judicial Magistrate, Rajapalayam on 20.12.2006, however, the documents were returned by the Judicial Magistrate, Rajapalayam and thereafter, the investigation

was transferred to the petitioner for further investigation.

3.The further case of the petitioner is that the the petitioner filed documents into the learned Judicial Magistrate, Rajapalayam on 14.10.2008, which were returned with an endorsement to produce the same along-with the final report and now the case is pending for trial. The petitioner moved the trial court to receive the additional documents. However, the trial court dismissed the application filed by the petitioner in CrI.M.P.No.1576 of 2017 in S.C.No.112 of 2011, dated 31.10.2017. Aggrieved by the same, the petitioner is before this court.

4.The learned Additional Public Prosecutor appearing for the petitioner submitted that during the course of investigation, the Inspector of Police, Rajapalayam South Police Station has recovered some documents in respect of the properties as well as other documents, which are very vital to the prosecution case to prove the motive that the accused have wanted to grab the properties for their illegal enrichment; that the impugned order passed by the trial court is not correct and that since the accused have no objection to mark the documents in support of the prosecution case. In view of the above circumstances, the learned Additional Public Prosecutor prays that the impugned order passed by the trial court has to be set aside and the criminal revision has to be allowed.

5.On the other hand, the learned counsel appearing for the respondents submitted that the trial court, after proper appreciation of the materials available on record, has passed the impugned order, which does not call for any interference by this court and prays for dismissal of the criminal revision.

6.Heard both sides and perused the materials available on record.

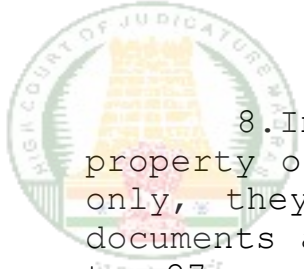
7.The petitioner filed the petition to receive the additional documents. The petitioner stated that the motive for the occurrence is that in order to grab the property of the deceased, the accused murdered the deceased, his wife and children and the petitioner has now only got the registration copy of the sale deed and some other important documents and the above documents are necessary to prove the case. For that, the learned Additional Public Prosecutor relied upon the decision reported in **2002-2- Crime (SC)159 (Central Bureau of Investigation Vs. R.S.Pai and another)**, wherein it has been held in para 7 as follows:-

"Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police



station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regrading such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section(2)."

From the aforesaid sub-sections, it is apparent that normally, the Investigating Officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the Investigating Officer to produce the same with the permission of the Court. In our view, considering the preliminary stage of prosecution and the context in which Police Officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word "'shall' used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to reply are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in Narayan Rao V. The State of Andhra Pradesh [(1958 SCR 283 at 293) and it was held that the word "shall" occurring in sub-section 4 of Section 173 and sub-section 3 of Section 207A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded the there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained."



8. In this case, motive for the occurrence is to grab the property of the deceased Ganesan. The petitioner stated that now only, they got the documents. Most of the petition mentioned documents are public documents. The petition mentioned documents 1 to 27 are recovered from the house of the deceased Ganesan. Hence, the petition mentioned documents are necessary for the adjudication of the case. No prejudice will be caused to the accused when the documents are received by the court. The reasons stated by the petitioners are acceptable. Hence, this court is of the considered view that the impugned order passed by the trial court is liable to be set aside and accordingly, it is set aside.

9. In the result, this criminal revision is **allowed**. The impugned order of the learned Fast Track Mahila Court, Virudhunagar @ Srivilliputhur, is set aside. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar (CS)

To,

The Fast Track Mahila Court,
Virudhunagar @ Srivilliputhur.

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-65680[F] dated 10/05/2019)

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