



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2019

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

Cr1.RC. (MD)No.431 of 2019

and

Cr1.MP (MD)Nos.6107 and 6108 of 2019

1.Mariappan

2.Suresh

3.Radha @ Radhakrishnan : Petitioners/Petitioners/

Accused 10, 13 & 15

Vs.

The State rep. By

The Inspector of Police,

Kadayam Police Station,

Tirunelveli District.

: Respondent/Respondent/Complainant

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure against the order passed by the IV Additional District and Sessions Judge, Tirunelveli, in Cr.M.P.No.3504 of 2019, dated 26.06.2019 in so far as his restriction of cross examining the other witnesses concerned, while playing the compact disc during trial of the case in S.C.No.48 of 2011 pending disposal of the case.

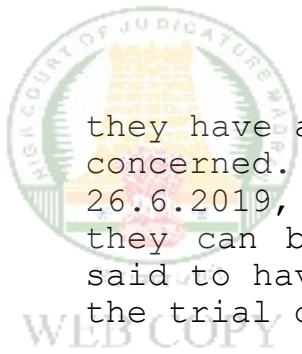
For Revision Petitioners : Mr.R.Anand

For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

J U D G M E N T

This Criminal Revision is directed against the order passed by the IV Additional District and Sessions Judge, Tirunelveli, in Cr.M.P.No.3504 of 2019, dated 26.06.2019 in so far as his restriction of cross examining the other witnesses concerned, while playing the compact disc during trial of the case in S.C.No.48 of 2011 pending disposal of the case.

2.According to the prosecution, the entire occurrence has been video-graphed and the same was subsequently uploaded in a compact disc, which is very much available in the court and the prosecution would say that the said CD would be marked during trial as one of the exhibits and the copies of the CD also have already been furnished to the accused. In the meantime, the petitioner and two others have moved a petition before the trial court to grant permission for bringing the Laptop so as to play the said CD and



they have also prayed for giving permission to examine the witnesses concerned. The trial Judge partly allowed the said petition, dated 26.6.2019, by which restricted the cross examination to be made and they can be allowed to examine PW12 and he is the person, who is said to have video-graphed the occurrence. Aggrieved by the order of the trial court, the petitioners are before this court.

3. The learned counsel appearing for the petitioners argued that the trial judge admitted that the CD contains the clipping of occurrence, where there are number of persons, whose presence are found place while playing the CD and it is necessary for the petitioners to question the eye witnesses (PW1 to PW3) as to their availability in the scene of crime and as per section 153 of the Indian Evidence Act, it is incumbent on the part of the accused persons to put question to those witnesses so as to test the veracity of their testimony and the learned judge after seeing the video has come to the conclusion that a culpable homicide had been taken place and hence, the witnesses concerned have to be allowed for cross examination and the trial judge has accepted that examination of witnesses upon touching the materials available in the CD is highly warranted and the trial judge could not have limited such of examining all the witnesses, who are said to have witnessed the occurrence and if at all PW1 and PW2 are subjected to cross examine by showing the video clipping, certainly the petitioners would thrash out the entire story of the prosecution and that allowing the petitioners to examine the other witnesses would not cause any prejudice to the prosecution. In view of the above circumstances, the learned counsel appearing for the petitioners prays for setting the impugned order by allowing this revision. In support of his contention, he relied upon the following judgements:-

1. (2014)10 SCC 473 (Anvar P.V vs. P.K.Basheer and other);

2. 2019-1-LW(Crl.) 481 (State represented by the Inspector of Police CDI/SCB, Chennai Vs V.P.Pandi @ Attack Pandi and others); and

3. Unreported judgment of the Apex court made in SLP(Crl) No.2302 of 2017, dated 30.01.2018 (Shafhi Mohammed Vs. The State of Himachal Pradesh).

4. Per contra, the learned Additional Advocate General appearing for the respondent/State submitted that the trial court has correctly passed the order, which does not call for any interference by this court and prays for dismissal of the criminal revision.

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

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6. In this case, the competent person to speak about the CD is the person who took the videography and the Investigating Officer. On the side of the prosecution, it is argued that they are going to mark the CD and at the time, the petitioners have ample opportunity to cross examine the witnesses by way of recalling the necessary witnesses. The trial court permitted the persons, who took the video/photo and Investigating Officer to put question in respect of taking of the video.

7. The trial judge already stated in his impugned order that the CD was taken after the occurrence. Hence, it is not in anyway helpful for the petitioners to cross examine PW1 to PW3, after showing the CD to the above persons.

8. For all the reasons stated above, this court is of the considered view that the impugned order passed by the trial court do not call for any interference by this court.

9. In the result, this criminal revision is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

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To,

1. The IV Additional District and Sessions Judge,
Tirunelveli.

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

Crl.RC (MD) No. 431 of 2019
29.07.2019

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