



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 25.11.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C. (MD) No.777 of 2019
and Crl.M.P(MD) Nos. 8912 and 8913 of 2019

A.G.Gopal ... Revision Petitioner/Petitioner/Accused No.2

Vs.

State rep by
The Inspector of Police
Vikkiramangalam Police Station
Madurai District
(Crime No.142 of 2013) ...Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code to call for the records pertaining to the order dated 08.10.2018, passed in Crl.M.P.No.335 of 2018 in S.C.No.588 of 2016, on the file of the I Additional District and Sessions Court, Madurai and set aside the same.

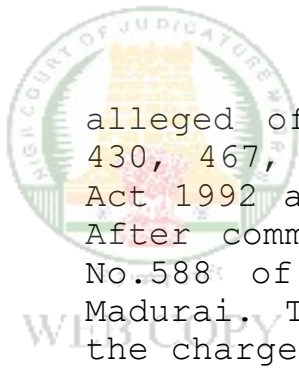
For Petitioner : Mr.A.Balamurugan

For Respondent : Mr.A.Natarajan,
State Public Prosecutor assisted by
Mr.R.Anandharaj, APP

O R D E R

The revision has been filed against the order passed by the learned I Additional District and Sessions Judge, Madurai in Crl.MP No.335 of 2018 in SC No.588 of 2016 dated 08.10.2018, dismissing the petition filed by the petitioner under Section 45 of Indian Evidence Act to send some of the documents to the Forensic Department to compare signature and thumb impression of the petitioner/accused and to ascertain its genuineness.

2. The case of the petitioner is that the respondent police has registered the First Information Report in Crime No. 142 of 2013 dated 20.12.2013 against the petitioner for the alleged offences under Sections 447, 397, 434, 417, 420, 430, 467, 468 IPC 304(ii) r/w 511 IPC and 3(i) of TNP (PD & L) Act 1992 and 6(3)(a) and 4(a) of Explosive Substances Act 1908, 4(1) (a) 21 and 23 of MMDR Act 1957. After investigation done into the First Information Report, a Charge Sheet was filed in PRC No.4 of 2016 for the



alleged offences under Sections 120B, 447, 397, 434, 417, 420, 430, 467, 468 IPC, 304 (ii) r/w 511 IPC and 3(i) of TNP (PD &L) Act 1992 and 6(3) (a) and 4(a) of Explosive Substances Act, 1908. After committal to the Session's Court, it was renumbered as SC No.588 of 2016, on the file of I Additional Sessions Court, Madurai. The petitioner herein was arrayed as the 2nd accused in the charge sheet.

3. According to the prosecution, on 28.07.1995 the petitioner allotted a licence to quarry granites at S.F.No.132/1 in Eravaarpatti Village, Usilampatty Taluk, Madurai District to an extent of 0.61.0 hectares, in the name of M/s. KSN & Co,. The licence was granted for a period of 10 years. Thereafter, the petitioner, who was said to be the Proprietor, carried on the quarry operation till 2005. Pursuant to the order of this Court in W.P.(MD) No.9990 of 2005, the petitioner was given an extension of lease for further period. During the period of extension, it was alleged that in the year 2010, the petitioner herein entered into an oral agreement with A6, by name, P.Palanichamy, one of the owners of P.R.P. Granite Company and carried out illegal quarrying activities in the allotted and un-allotted areas in S.F.No.132/1 and also in the un-allotted Survey No.133/1, which is a Patta land belonging to A-14 by name, Devendiran and thereby caused loss to the treasury of State.

4. The basis of the complaint was that an inspection alleged to have been conducted on 21.12.2012 by a team formed by the Director of Geology Department, Chennai and the District Collector, accompanied by their officials. After the inspection, evaluation report was prepared and the entire case was based on the said evaluation report filed by the inspecting officials. Thereafter, the First Information Report was registered.

5. The case of the petitioner herein is that he has nothing to do with the quarry operation at all. According to the petitioner, the evaluation report was not prepared by following the established procedure of law. Therefore, the evaluation report prepared by the investigating officials was *per se* illegal and unsustainable in law. The petitioner pleaded that he was not the owner of the company namely, M/s K.S.N & Co and the police have not investigated in respect of the true ownership of the Company and the so-called lease deed which was relied on by the Inspecting Officials dated 28.07.1995 though bears the petitioner's name, was not actually signed by the petitioner nor his thumb impression was affixed. Since the ownership of the company and whether the petitioner is in-charge of the company was very important question of fact, which was the foundation of the complaint and the inspection, the petitioner had filed the petition under Section 45



of Indian Evidence Act before the I Additional District and Sessions Court, Madurai, to compare the disputed document containing the signature of the petitioner and his thumb impression. The petitioner pleaded before the trial Court that in case, he succeeds after the comparison of the signature and thumb impression by the Forensic Department, he need not stand for ordeal of entire trial and in such event, the investigating officials can go for re-investigation and rope in the real accused. According to the petitioner, the ownership of the company, which involved in the illegal quarry is the very essence of the accusation and it is imperative to conduct verification of signature/thumb impression, which was not done before proceeding against the petitioner.

6. The trial Court by the impugned Order dated 08.10.2018, dismissed the petition without going into the merits that the petition filed under Section 45 of the Indian Evidence Act need not be entertained at the stage of framing of charges. However, the petitioner is entitled to raise such defence and he is further entitled to submit sufficient proof only at the stage of defence evidence. In the said circumstances, the petition filed under Section 45 of the Indian Evidence Act was found to be unnecessary for determining the *prima facie* case against the petitioner/accused. In the said circumstances, the petition came to be dismissed against which, the present revision petition has been filed.

7. The learned counsel appearing for the petitioner would strenuously contend that the investigation into the genuineness of the signature/thumb impression, in order to establish the factum of ownership was essential before proceeding with the trial, since the investigation into the signature/thumb impression would determine further course of action initiated against the petitioner. According to the learned counsel, the substratum of the very complaint is on the basis of certain documents said to have been signed and affixure of the thumb impression by the petitioner and in the event of petitioner coming out successfully in the investigation, the petitioner can avoid being arrayed as an accused and also he can avoid being subjected to ordeal of the trial.

8. He would submit that no doubt, the learned trial judge has observed that the petitioner can exercise his right to raise his defence at the time of defence side evidence, nevertheless, why should a person stand the trial half way questioning the very validity of the documents, which are the foundation of the entire complaint filed against the revision petitioner. The learned counsel would also submit that no prejudice would be caused to the prosecution if a direction is issued for investigating into the



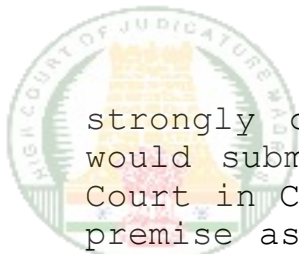
validity and veracity of the documents in question.

9. The learned counsel in the course of the arguments would also draw the attention of this Court to the earlier petition filed by the petitioner in Crl.O.P.No.4041 of 2019 dated 25.04.2019, wherein a direction was sought for reinvestigation of the matter in order to file additional charge sheet. The learned Judge of this Court, while modifying the prayer sought for in the said Criminal Original Petition, has directed the trial Court to dispose of the Crl.M.P.335 of 2018, which was filed seeking an expert opinion on the petitioner's signature/thumb impression, within a period of one week from the date of receipt of copy of that order. While disposing of such petition, the learned judge has observed in paragraph 6 as under:-

6.The only issue is whether the petition filed by the petitioner before the District Court for having an expert opinion on his impugned signature is about the timing of the petition. In other words whether the petitioner should be filed now or later when he gets an opportunity to advance evidence for the defence. However, there is one point the petitioner has raised, which this Court does not consider it inappropriate. According to him, if the evidence of stellar quality is there, then notwithstanding the fact that whether the expert opinion is just or not, at least it leaves open further possibility to contemplate a decision on further investigation.

10. The learned counsel would lay much emphasis of the observation made by the learned Judge stating that the timing of the request was important. The learned judge felt that the petition filed under Section 45 of the Indian evidence Act at the time of making the preliminary objection regarding the conduct of trial was not found inappropriate. In the circumstances of the case, since it atleast leaves open for further possibility to contemplate a decision for further investigation, the learned counsel would submit that the investigation to be ordered is not going to either way prejudice the prosecution. In case, the petitioner succeeds, he would be able to establish his defence at the preliminary stage itself. On the other hand, if he fails in his attempt, it is always open to the prosecution to proceed further and it is the petitioner who was taking a risk in seeking investigation of his signature/thumb impression. Therefore, he would submit that it is a fit case that the petition filed under Section 45 of the Indian Evidence Act is to be ordered within a stipulated time, as observed by the learned Judge of this Court.

11. Mr. A. Natarajan, the learned State Public Prosecutor would



strongly oppose for grant of any relief to the petitioner. He would submit that the order passed by the learned Judge of this Court in Crl.O.P.No.4041 of 2019 dated 25.04.2019 was on the wrong premise as if there was a pending petition before the trial Court seeking for a direction for expert's opinion on the petitioner's thump impression, when the fact of the matter was that the said petition was already dismissed by this Court as early as on 08.10.2018. According to the learned State Public Prosecutor, even after the dismissal of the petition, the petitioner had sought for a direction to dispose of the petition, as if the same was pending. Therefore, the ultimate observation of the learned judge in paragraph 6 of the impugned order, which was extracted above, may not have any bearing on this Court and this Court need not be persuaded by the observation, while deciding the present revision petition.

12. The learned State Public Prosecutor would also submit that the right of the petitioner to let in defence evidence is not shutout since the trial Court has already observed that such right could be exercised by the petitioner at the time of letting his defence side evidence. When such right is protected, the petition under Section 45 of the Indian Evidence Act is only intended to stall the trial proceedings and protract the same at the very preliminary stage. He would submit that filing of the petition in the said circumstances of the case lacks *bonafides*. He would further add that whatever be the result of investigation to be ordered, the petitioner has to stand in the trial since the allegations against the petitioner can always be proved *de hors* the outcome of the investigation under Section 45 of the Indian Evidence Act. Therefore, he would submit that the order passed by the trial court, which is impugned in the revision petition does not call for any interference and the revision petition hence is devoid of merits and the same is liable to be dismissed.

13. I have given my anxious consideration to the submissions made by the learned counsel for the petitioner and the learned State Public prosecutor for the respondent.

14. It is true that the observation of the learned Judge of the Court in the order passed in Crl.O.P.No.4041 of 2019 may not have direct bearing on this Court, while deciding the present revision petition, since the order was passed by the learned judge without taking note of the fact that the petition under Section 45 of Indian Evidence Act was dismissed as early as on 09.10.2018 itself and the question of giving of any direction to the trial Court to dispose of the petition filed Section 45 of Indian Evidence Act did not rise at all. Unfortunately, the factum of disposal of the petition filed under Section 45 of Indian Evidence Act on 18.10.2018 was not brought to the knowledge of the learned



Judge of this court either by the learned counsel for petitioner or by the learned Government Pleader appearing for the State. According to them, they were not aware of the disposal of the petition filed Section 45 of Indian Evidence Act.

15. Be that as it may, ultimately this Court was called open to test the validity of the order passed by the trial Court, which is impugned in the revision petition. No doubt, the trial Court has reserved the right of the petitioner to let in his evidence that when the turn comes for defence side and no need to file a petition under Section 45 of the Indian Evidence Act at the preliminary stage. Yet, the arguments advanced on behalf of the petitioner merits serious consideration, for the reason that the signature/ thumb impression of the petitioner in certain crucial documents, formed the basis of the complaint and investigation, which is the subject matter of the petition filed under Section 45 of Evidence Act.

16. As rightly contended by the learned counsel for the petitioner, in case the petitioner comes out successfully in the investigation that his signature or thumb impression in certain crucial documents was found to be forged, it is always possible that the petitioner need not stand the ordeal of trial. On the other hand, though it is open to the petitioner to let in such plea at later stage, in that event, the petitioner would be subjected to trial to substantial measure, which could be avoided if such investigation is carried out in the preliminary stage itself.

17. As rightly contended by the learned counsel for the petitioner by ordering investigation at this stage, no prejudice is going to be caused for the prosecution at all. Only concern expressed by the prosecution that the intention of the petitioner is to drag the proceedings can always addressed by this court by fixing a stipulated time, within which the investigation shall be completed and a report be filed. In such event, the apprehension expressed by the prosecution stand allayed and their concern addressed. Even though the observation of the learned Judge of this Court in Paragraph 6 in the order passed in Crl.O.P.4041 of 2019 which is extracted above rendered on wrong premise, this Court finds that the observation of the learned Judge of this Court cannot be lost sight of. The learned judge has held that the timing of the petition under Section 45 of Evidence Act was not found to be inappropriate and in that case, if there was any material emerging in favour of the petitioner, there would be always possibility of ordering re-investigation. In fact, this was precisely the argument of the learned counsel for the petitioner.

18. On conspectus of the above, this Court is of the view that



the very foundation of the complaint was on the basis of the certain crucial documents said to have been signed or affixure of thumb impression by the petitioner, which is sought to be challenged by the petitioner. While so, it is always in the interest of the investigation that at the preliminary stage, investigation has to be conducted in order to establish the factum of validity of documents in question. Such course of action will also be helpful for the investigation so that the persons actually involved in the crime would not be left out. This Court finds that no prejudice would be caused to the prosecution, if the petition filed under Section 45 of the Indian Evidence Act is allowed at this stage.

19. For the above reasons, this Court is inclined to set aside the order passed by the learned I Additional District and Sessions Judge, Madurai, in Crl.M.P.No.335 of 2018 in S.C.No.588 of 2016. Accordingly, the same is set aside. The petition filed under Section 45 of Evidence Act is allowed. The documents, which are subject matter of the Crl.M.P.No.335 of 2018 shall be sent to the Forensic Science Department to compare the signature/thumb impression of the petitioner and also to ascertain the genuineness of the signature/thumb impression of the petitioner and file a report before the trial Court. The Forensic Science Department is directed to give an opportunity to the parties concerned and after investigation, the Forensic Science Department shall file a report within a period of six weeks from the date of receipt of copy of this Order. Thereafter, on receipt of such report, the trial court shall proceed further as it deem fit. The trial court shall conduct trial and complete the same as expeditiously as possible.

20. With the above directions, this Criminal Revision is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

CM

To

1. The I Additional District and Sessions Judge, Madurai

2. The Judicial Magistrate No.II, Usilampatti



3.The Inspector of Police,
Vikkiramangalam Police Station, Madurai

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

5.The Director,
The Regional Forensic Science Department
Collector Office Road,
Near Alwarpuram, Alwarpuram
Madurai-625 020.

+1 CC to M/s.A.BALAMURUGAN, Advocate (SR-101321[F] dated
26/11/2019)

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