



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)Nos.2001 and 2008 of 2020
and
Crl.M.P.(MD)Nos.1000, 1001, 1011 and 1012 of 2020

1.Deivendiran

2.Gurusamy

3.Rajan @ Karppagaraaj

4.Anand @ Divendiran

... Petitioners
in both Crl.O.Ps.

Vs

1.State Rep. by,
The Inspector of Police,
Kovilpatti East Police Station,
Kovilpatti,
Thoothukudi District.
(Crime No.926 of 2011)

2.R.Karthick Kumar

... Respondents
in both Crl.O.Ps.

(R2 is impleaded vide order of this cour dated 12.03.2020 made in
Crl MP(MD)No.1910,1911/2020 in CRL OP(MD)No.2001,2008/2020)

COMMON PRAYER: Petitions filed under Section 482 Code of Criminal Procedure, to call for the records and set aside the order dated 13.12.2019 passed in Crl.M.P.Nos.5070 and 5071 of 2019 in S.C.No.301 of 2016 on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, Thoothukudi District.

For Petitioners : Mr.A.Thiruvadi Kumar

For R1 : Mr.A.Robinson
Government Advocate (Crl.side)

For R2 : Mr.V.Sasikumar
(in both Crl.O.Ps.)



COMMON ORDER

Heard the learned counsel appearing for the petitioners, learned counsel appearing for the intervenor and the learned Government Advocate (Crl.side).

2.The petitioners are facing trial in S.C.No.301 of 2016 on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, Thoothukudi District, for the offences under Sections 147, 306 and 506(i) of IPC. In the said case, the prosecution took out two applications, namely, Cr.M.P.Nos.5070 and 5071 of 2019. One was for recall of P.W.3 and the other was for marking as many as five documents without they being formally proved. The learned Sessions Judge allowed both the applications by the impugned order dated 13.12.2019. The same is under challenge in these two criminal original petitions.

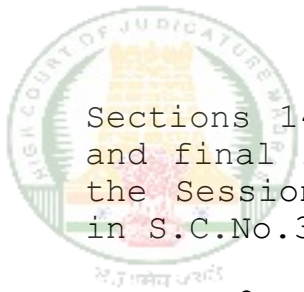
3.The learned counsel appearing for the petitioners reiterated the contentions set out in the memorandum of grounds and wanted this Court to set aside the impugned order in *toto*.

4.Per contra, the learned Government Advocate (Crl.side) as well the defacto complainant submitted that the impugned order does not warrant any interference.

5.I carefully considered the rival contentions and perused the materials on record.

6.The prosecution case is that in the local body election held in the year 2011, one Maheswaran got elected as ward councillor. He won on behalf of ADMK party. One Karthick Kumar and Vishnu Shankar canvassed for him in the election. The first petitioner Deivendran won on behalf of MDMk Party for 2nd ward.

7.The prosecution case is that Deivendran wanted to contest for the post of Vice Chairman and compelled Maheswaran to vote for him. Maheswaran is said to have refused the said request. Deivendran is said to have nurtured an impression that Karthick Kumar and Vishnu Shankar were responsible for Maheswaran taking such a stand. Deivendran is said to have arranged hooligans to beat up these two individuals on the night of 22.10.2011. These two individuals had taken shelter in their house along with their parents. At about 10.30 p.m., the accused are said to have knocked the house of Karthick Kumar and criminally intimidated the inmates that if Maheshwaran did not vote for Deivendran, they will have to face dire consequences. Dhana Lakshmi, mother of Kathick Kumar, was said to have been the target of the threat. Dhana Lakshmi is said to have consumed poison and died as a result. In this regard, Crime No.926 of 2011 was registered on the file of the Inspector of Police, Kovvurpetti East Police Station, for the offences under



Sections 147, 506(i) and 306 of IPC. The matter was investigated and final report was filed and after committal, it was taken up by the Sessions Court, Mahalir Neethimandran, Thoothukudi, for trial in S.C.No.301 of 2016.

8.It is not in dispute that the prosecution side had been examined in full and examination under Section 313 of Cr.P.C. was also over. Written arguments have also been filed by Deivendran. The case is yet to be taken up for arguments. At this stage, the prosecution had filed these two applications.

9.It is not in dispute that Maheswaran, who is figuring prominently in the prosecution and who was examined as P.W.8, turned hostile. Therefore, the prosecution cannot be blamed for taking out a petition for recall. The prosecution wants to mark the following documents without they being formally proved:-

"(1) Certificate copy of the FIR in Cr.No.1051 of 2011 of Kovilpatti West Police Station in C.C.No.126 of 2012, Judicial Magistrate No.2, Kovilpatti, is one Devindaran, who is arrayed as complainant No.1 in the case.

(2) Deposition of P.W.1 namely Deivendran in C.C.No.126/2012 Judicial Magistrate No.2, Kovilpatti and accused No.1 in this case.

(3) Documents relating to Cr.No.1051 of 2011 Kovilpatti West Police Station namely Vishnushankar anticipatory bail surety memo and surrender petition documents filed before the Judicial Magistrate Court No.2, Kovilpatti in Cr.M.P.No.3179 of 2011 of the Principal District Court, Thoothukudi who is P.W.3 in this case.

(4) Documents relating to Cr.No.924/2011 of Kovilpatti East Police Station, the complainant in this case one Maheshwaran who is in this case arrayed as witnesses of P.W.8 and the above said Maheswaran who gave complaint against Accused No.2 in this case.

(5) Documents relating to Kovilpatti Municipality which is being obtained by means of Right to Information Act, 2005, dated 31.07.2019 petition and reply for the contesting post of Vice Chairman in the year 2011-2016."

10.In other words, the prosecution seeks to invoke Section 294(b) of Cr.P.C.

"294. No formal proof of certain documents:

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under this Code without proof of the signature of the



person to whom it purports to be signed:

PROVIDED that the Court may, in its discretion require such signature to be proved".

11.As rightly contended by the learned counsel appearing for the petitioner and as admitted by the respondents also, Document No.1 namely, FIR in Crime No.1051 of 2011 on the file of the Kovilpatti West Police Station, has already been marked as Ex.D1. Therefore, there is no need to mark the said document again.

12.Likewise, a deposition of P.W.1 in C.C.No.126 of 2012 on the file of the Judicial Magistrate No.2, Kovilpatti, cannot be marked as it is direct hit by Section 33 of the Evidence Act. Section 33 of the Evidence Act reads as follows:-

"Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.-Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable;

Provided--that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.--A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section."

13.The said P.W.1 in C.C.No.126 of 2012 on the file of the Judicial Magistrate No.2, Kovilpatti, is none other than the first accused/Deivendran. He is very much alive and facing the instant prosecution. Therefore, his deposition given in the other case obviously cannot be marked through P.W.3. Like wise, Item No.5, being a response obtained under RTI Act cannot be marked through P.W.1.

14.The learned counsel appearing for the petitioner draws my attention to the decision reported in **2019 1 Law Weekly (Cr1.) 895**. In the said decision, it was held as follows:-

"15.In this case, so far as the document sought to be marked is concerned, is a letter dated 24.03.2017, stated to have been received by the petitioner by way of a reply under the RTI Act

<https://hcservices.ecourts.gov.in/hcservices/>



with enclosures containing copies of three letters of the Assistant Executive Engineer, Irrigation Sub Division PWD, WRO, Gobichettipalayam, and that the details of the documents sought to be marked are in the

(i) letter No.Ko2/2005, dated 25.05.2005 by the Assistant Executive Engineer, Irrigation Sub Division PWD, WRO, Gobichettipalayam.

(ii) Letter No.696/2005/Ko 50 dated 25.05.2005, by Assistant Executive Engineer, Irrigation Sub Division PWD, WRO, Gobichettipalayam and

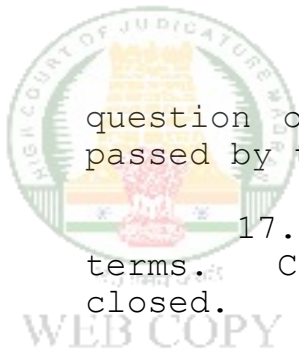
(iii) Letter No.696/2005/Ko 50, dated 11.06.2005.

16.As rightly pointed out by the learned Additional Public Prosecutor, no particulars are available with regard to what was the information sought for in the application under the RTI Act and what was the reply given by the concerned authorities with regard to the same and in such circumstances, it would be unsafe to accept the documents without formal proof and thereby the trial Court has rightly dismissed the petition.

17.In view of the above discussion, I do not find any infirmity in the order passed by the learned trial Judge. At the same time, while dismissing the Criminal Original Petition, this Court is of the opinion that non acceptance of the document under Section 294 Cr.P.C., does not preclude the party requiring to mark it in the manner at the relevant stage of trial and thereby liberty may be afforded to the petitioner to mark the documents in the event of petition being filed, invoking the appropriate procedure taking into consideration the stage of trial."

15.The petitioners challenge the genuineness and authenticity of Item No.5 mentioned above. Therefore, I am of the view that it would be unsafe to accept Item No.5 without formal proof. However, non acceptance of the document will not preclude the prosecution to mark the same in the manner known to law. Therefore, the respondent is given liberty to mark the said document by invoking appropriate procedure. It is made clear that this Court has not given any positive observation or findings in this regard. All that this Court grants is mere liberty and nothing more than that the Court below shall not take it as if this Court has given a direction for allowing a petition if it is filed by the prosecution in future. It is for the Court below to take a call in the matter.

16.As regards Item Nos.3 and 4, I am of the view that these two items can very well be marked even without formal proof. Therefore, the order passed by the Court below permitting the prosecution to recall P.W.3 is sustained. However, through him, only Item Nos.3 and 4 can be marked under Section 294 of Cr.P. C. Item No. 5 cannot be marked under Section 294 of Cr.P.C. The



question of marking item Nos.1 and 2 does not arise. The orders passed by the Court below are modified to this extent.

17. These criminal original petitions are allowed on these terms. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar

To

1. The Inspector of Police,
Kovilpatti East Police Station,
Kovilpatti,
Thoothukudi District.

2. The Sessions Judge, Mahalir Neethimandram
(Fast Track Mahila Court), Thoothukudi, Thoothukudi District.

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

+2 CC to M/s.V.SASIKUMAR, Advocate, SR NOS.11433 & 11434

+1 CC to M/s.A.THIRUVADIKUMAR, Advocate (SR-11568[F] dated
13/03/2020)

CrI.O.P(MD)Nos.2001 and 2008 of 2020
and

CrI.M.P.(MD)Nos.1000, 1001, 1011 and 1012 of 2020
12.03.2020

RMI

MS/PN/SAR-4/17.03.2020/6P.7C