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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

CrI.R.C(MD)No.78 of 2020

and

CrI.MP(MD)No.700 of 2020

Ulaganathan : Revision Petitioner/Petitioner/A2
Vs.

State rep. by
The Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District. : Respondent/Respondent/Complainant

Prayer: Criminal Revision has been filed under section 397(1) and 401 of Criminal Procedure Code, against the order, dated 27.11.2019 passed in Cr.M.P No.3310 of 2019 in S.C.No.90 of 2016 on the file of the Principal Sessions Judge Srivilliputhur.

For Petitioner : Mr.P.Muthusamy

For Respondent : Mr.APG. Ohm Chairma Prabhu
Government Advocate (Criminal side)

J U D G M E N T

This Criminal Revision is directed against the order, dated 27.11.2019 passed in Cr.M.P No.3310 of 2019 by the Principal Sessions Judge, Srivilliputhur.

2.The petitioner, who has arrayed as A2 in connection with a case in Crime No.3 of 2014 on the file of the respondent police, filed a petition in CrI.MP No.3310 of 2019 in S.C.No.90 of 2016 on the file of the Principal Sessions Judge, Srivilliputhur, to permit him to given evidence and exhibit the relevant video footage by marking the pen drive on the defence side document. The learned Judge allowed the petition on 27.11.2019 with condition to examine the Cameraman first and then mark the pen drive. Aggrieved by the said order, the petitioner/A2 is before this court.

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

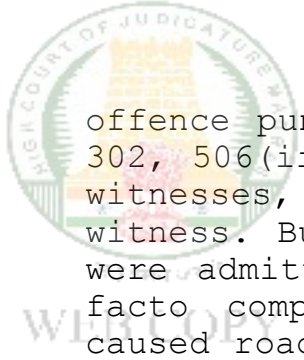
4.The learned counsel appearing for the petitioner/A2 argued that the petitioner/A2 sustained injuries in the above said incident and the deceased also came to the occurrence place with weapons along with three persons and they have also attacked with knife and the petitioner and another one Murugan were also injured and admitted in the Government Hospital, Rajapalayam and after that, the respondent police arrested the petitioner/A2 from the hospital in forcible manner and at that time, one of the News Agency Cameraman Karpaga Gnaniyar also took video coverage and saved in the computer and after that, he handed over the same to the petitioner in the form of pen drive and hence, it is a necessary proof on the side of



the petitioner to prove the arrest and the above said Cameraman also ready for defence side witness and since the respondent police and the de-facto complainant threatened him, he could not come to the court to mark the above said pen drive (video footage) on the defence side witness and the petitioner/A2 was arrested at the Government Hospital, Rajapalayam and it should be proved by marking through defence side evidence and if the petitioner was not allowed, he would be put to irreparable loss and hardship and prays that the criminal revision has to be allowed. Further, the learned counsel for the petitioner/A2 submitted the ruling reported in **(2018) 2 SCC 801 (Shafhi Mohammed Vs. State of H.P)** contending that threshold admissibility of electronic evidence cannot be ruled out on any technicality if same is relevant and its authenticity and procedure for its admissibility may depend on fact situation such as whether person producing such evidence is in a position to furnish certificate under section 65-B(4) and if party producing electronic evidence is not in possession of device from which electronic document was produced, then such party, held, cannot be required to produce certificate under section 65-B(4) of the Evidence Act and requirement of certificate under section 65-B(4) being procedural, can be relaxed by court wherever interest of justice so justifies, thus requirement of certificate under section 65-B(4) is not always mandatory.

5. On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State argued that the arrest of the petitioner/A2 was video-graphed by one Karpaga Gnaniyar, who is working in a News Agency and the petitioner/A2 stated that the video was transferred in the form of pen drive and the said Karpaga Gnaniyar gave pen drive to the petitioner/A2 and hence, first the said Karpaga Gnaniyar has to be examined as he himself has given the pen drive to the petitioner, has to be proved by the petitioner herein, but the petitioner states that Karpaga Gnaniyar does not have a chance to know who are all involved in the occurrence, only the petitioner can give evidence, while on this statement by the petitioner's counsel, but the petitioner has stated that the said Karpaga Gnaniyar had given the pen drive on the request of the petitioner herein and first the said Karpaga Gnaniyar should be enquired and based on that, the pen drive can be marked and the order passed by the trial court is correct and it is the bounden duty of the petitioner to bring the said Karpaga Gnaniyar before the trial court to prove his defence and the petitioner only disputed his arrest and A1 and hence, the order passed by the lower court is correct and prays that the criminal revision has to be dismissed.

6. In this case, the petitioner filed CrI.MP No.3310 of 2009 in S.C.No.90 of 2016 on the file of the Principal Sessions Court, Srivilliputhur praying to permit the petitioner/A2 to give evidence and exhibit the relevant video footage by marking the pen drive on the defence side document. The petitioner stated in his petition that he has been arraigned as an accused along with others for the



offence punishable under sections 150, 148, 294(b), 324, 341, 307, 302, 506(ii) r/w 139 IPC and after the prosecution has examined the witnesses, this petitioner/A2 was examined in chief as defence side witness. But the petitioner stated that he and the accused Murugan were admitted in the Government Hospital, Rajapalayam and the de-facto complainant and her supporters gathered in the hospital, caused road blockade, indulged in violence in the hospital premises and damaged the two wheeler bearing number TN-67-AT-6006 standing inside the hospital and demanding the arrest of the accused and the police party led by the Rajapalayam DSP pacified the supporters of the de-facto complainant and on the very same day at about 2.00 pm, both the accused were arrested by the police inside the hospital premises and taken to the police station and the above said event was clearly video-graphed by one Karpaga Gnaniyar, who is working in a News Agency and the petitioner got a copy of the video from him in a pen drive on or after 27th September'' of 2014. The petitioner stated that his arrest was video-graphed by one Karpaga Gnaniyar and he transferred the video into a pen drive and now, he wanted to prove his case and prayed the court to permit him to mark the pen drive. It is admitted by the petitioner/A2 that the arrest was video-graphed by Karpaga Gnaniyar and footage is available with him. The said Karpaga Gnaniyar is the author of the video-graph and he is the correct person to depose about the above video-graph. Hence, it is held that the video can be proved only through Karpaga Gnaniyar and it is necessary to examine him at first and after examining the above video-grapher, the petitioner/A2 is permitted to mark the pen drive. The trial court has correctly come to the conclusion that at first the video-grapher, who took the above occurrence was examined is correct and it is not necessary to interfere in the findings of the trial court.

7.In the result, this criminal revision is **dismissed**.
Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl.side)

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Sub Assistant Registrar(CS)

er

1.The Principal Sessions Judge,Srivilliputhur.

2.The Additional Public Prosecutor,

Madurai Bench of Madras High Court,Madurai.

Copy to: The Section Officer, Criminal Section, (2 copies)

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.MUTHUSAMY, Advocate (SR-6415[F] dated 14/02/2020)

Judgment made in

Crl.R.C(MD)No.78 of 2020

13.02.2020