

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.R.C.No.49 of 2021

Harigovindan

... Petitioner

.Vs.

State represented by its Deputy Superintendent of Police,
District Crime Branch,
Villupuram District
Cr.No.4 of 2008

.... Respondent

PRAYER : Criminal Revision case filed under Sections 397 r/w 401 or Cr.P.C. against the Judgment dated 17.12.2020 passed in C.M.P.No.344 of 2019 in Crl.A.No.59 of 2017 on the file of the learned Additional District and Sessions Judge, Villupuram @ Kallakurichi, consequently allow the petition seeking additional documents.

For Petitioner : Mr.S.N.Subramani

For Respondent : Mr.K.Madhan

Government Advocate (Crl.side)

O R D E R

This Criminal Revision has been filed against the order dated 17.12.2020 passed in C.M.P.No.344 of 2019 in Crl.A.No.59 of 2007 on the file of the learned Additional District and Sessions Judge, Villupuram @ Kallakurichi.

2. The petitioner is the appellant in Crl.A.No.59 of 2017, on the file of learned III Additional District and Sessions Judge, Villupuram @ Kallakurichi and during the pendency of the appeal, the petitioner also filed petition under Section 391 Cr.P.C. in C.M.P.No.344 of 2019 and the said petition was dismissed by learned Additional District and Sessions Judge, Villupuram @ Kallakurichi. Challenging the said order, the petitioner is before this Court by way of the present revision.

3.The learned counsel for the petitioner would submit that two cases have been registered against the petitioner in Cr..Nos. 14 of 2007 and 4 of 2008 in which the de-facto complainant is one and the same and after investigation in F.I.R.No. 14 of 2008, charge sheet was laid in C.C.No. 5 of 2009, which was quashed by this Court vide order dated 08.06.2012 in Crl.O.P.No.16691 of 2010. He would further submit

that after investigation in Cr.No.4 of 2008 a case was registered in C.C.No.308 of 2008, on the file of learned Judicial Magistrate, Kallakurichi and the trial Court after enquiry convicted the petitioner under Sections 468 and 471 of I.P.C. as against which the petitioner filed appeal before the District Sessions Judge, Villupuram and during the pendency of the Appeal, the petitioner filed a petition under Section 391 Cr.P.C. to receive the additional documents such as F.I.R No.14 of 2007, Charge Sheet in C.C.No.5 of 2009 and the Judgment copy in C.C.No.5 of 2009 of Judicial Magistrate, Attur as well as the order of this Court in Crl.O.P.No.16691 of 2010 as these documents are very much necessary to decide the appeal, but the trial Court failed to consider the same and dismissed the petition filed by the petitioner and therefore the same warrants interference. He would further submit that the delay is not the sole ground to disallow the claim under Section 391 Cr.P.C.. In support of his contention he placed reliance on the Judgments of the Hon'ble Supreme Court in the following cases:

- (i) Brig. Sukhjeet Singh (Retd.,) MVC and The State of Uttar Pradesh and Ors.,
- (ii) Veer Singh Lopoke Ex.MLA Vs. Sukbinder Singh Sarkaria MLA and another.

4. Per contra the learned Government Advocate (crl.side) submitted that the petitioner has not stated that what way the documents sought to be filed are relevant to decide the appeal. He would further submit that the accused who are arrayed as accused in C.C.No.5 of 2009 are not arrayed as parties in C.C.No.308 of 2008. He would further submit in order to fill up the lakuna he cannot invoke Section 391 of Cr.P.C. and further, the appeal was filed in the year 2017 and only after two years the application to receive the additional documents was filed and therefore it is very clear that only in order to protract the case the petition under Section 391 Cr.P.C. was filed and further the requirement under Section 391 Cr.P.C. was not fulfilled. Hence the learned Judge has rightly dismissed the petition filed by the petitioner, which does not warrant any interference.

5. Heard both sides. Perused the material available on record.

6. A case was registered against the petitioner in Cr.No. 4 of 2008 and after investigation a charge sheet was filed and the same was taken on file in C.C.No.308 of 2008 on the file of the Judicial Magistrate No.I, Kallakurichi and the learned Magistrate after framing charges for trial, convicted the petitioner under Section 468 and 471 I.P.C. Challenging said conviction and sentence, he filed Appeal before the III Additional District and Sessions Judge, Villupuram @ Kallakurichi and during the pendency of the appeal, he filed petition under Section 391 Cr.P.C. seeking to receive additional documents and the same was dismissed vide order

dated 17.12.2020.

7. A careful reading of the order passed by the trial court would go to show that the trial court found that the prosecution established its case beyond reasonable doubt, but in order to get over the Judgment, the petitioner has filed the petition under Section 391 Cr.P.C for filing of the additional documents. Further, the trial court also found that the petitioner has not established in what way, the documents sought to be received are relevant to the present case and further the accused who are arrayed as accused in C.C.No.5 of 2009 are not arrayed as accused in C.C.No.308 of 2008. Further, the appeal was filed in the year 2017 and only after two years the application to receive the additional documents was filed and therefore it is very clear that only in order to protract the case the petition under Section 391 Cr.P.C. was filed and further the requirement under Section 391 Cr.P.C. was not fulfilled. Therefore, under these circumstances the documents sought for by the petitioner as Additional evidence is not relevant to decide this case and even if it comes to Court also the decision will not change. Therefore, under these circumstances, the learned Judge rightly dismissed the petition. There is no irregularity or infirmity in the order passed by the learned Sessions Judge. Further, there is no quarrel over the proposition of law laid down in the Judgments relied on by the learned counsel for the petitioner. But the facts and circumstances in the present case are not relevant to the decisions relied on by the counsel for petitioner. The learned Judge in the present case has dismissed the petition filed under Section 391 Cr.P.C, on the ground that documents sought to be received are not relevant to decide the present case and further the accused who are arrayed as accused in C.C.No.5 of 2009 are not arrayed as accused in C.C.No.308 of 2008 but not on the ground of delay. There is no merit in the revision and the same is liable to be dismissed.

8. Accordingly the same is dismissed. Since the Appeal is pending from 2017, the learned III Additional District & Sessions Judge, Villupuram @ Kallakurichi is directed to dispose of the Appeal in C.A.No.59 of 2017 on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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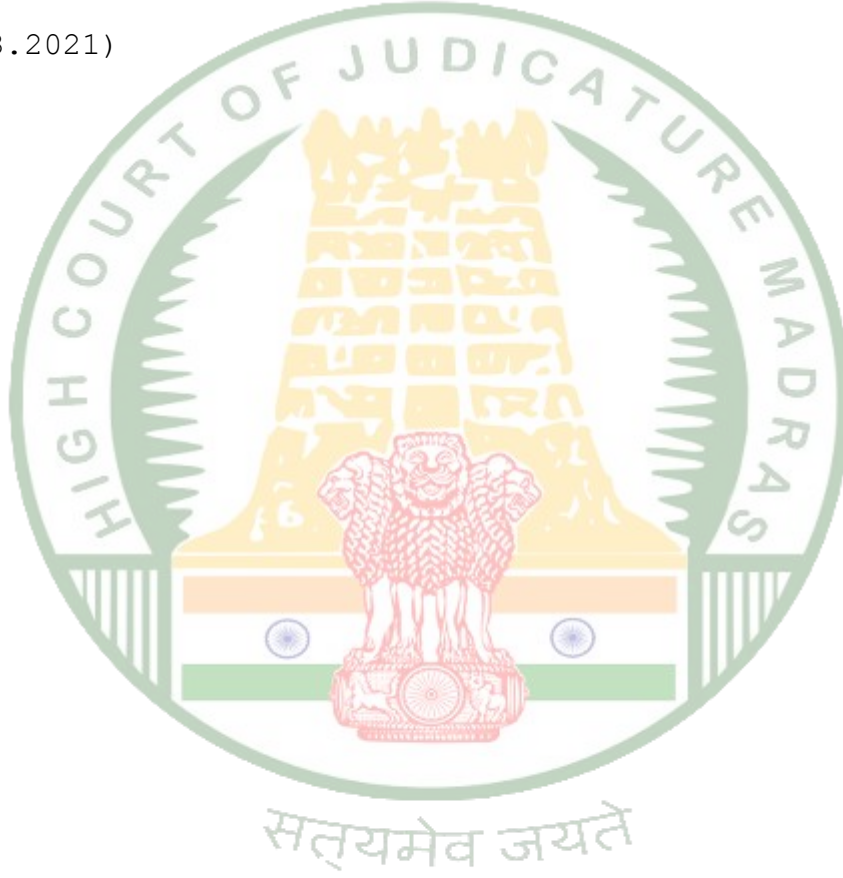
To

1. The Deputy Superintendent of Police,
District Crime Branch,
Villupuram District

2. The Additional District and Sessions Judge, Villupuram @
Kallakurichi.

Crl.R.C.No.49 of 2021

rsv co
A.SK(17.03.2021)



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