

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.04.2021

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.178 of 2021
and
Crl.M.P.No.4243 of 2021

B. William

.. Petitioner

Vs.

State,
Represented by the Inspector of Police,
E4-Abhiramapuram Police Station,
Chennai.

.. Respondent

PRAYER : Criminal Revision filed under Sections 397 and 401 Cr.P.C., to set aside the order passed in Crl.M.P.No.1575 of 2021 in S.C.No.348 of 2015 on the file of I Additional City Civil Court, Chennai, and allow the petitioner to summon The Head of Face Book for India, Office at 4th floor, Building-14. Opus Towers, Mindspace, Cyberabad, APIIC SW Unit Layout, Madhapur, Hyderabad - 500081 to produce all the necessary documents as a defense witness to prove the nexus between the put up witnesses and also to prove his innocence before the Hon'ble trial Court.

For Petitioner: Mr. R. John Sathyan
for M/S. S. Gowshik Sundhar

For Respondent : Mrs.Krithika Kamal
Government Advocate (Crl.side)

सत्यमेव जयते
O R D E R

This petition has been filed to set aside the order passed in Crl.M.P.No.1575 of 2021 in S.C.No.348 of 2015 on the file of I Additional City Civil Court, Chennai, and allow the petitioner to summon The Head of Face Book for India, Office at 4th floor, Building-14. Opus Towers, Mindspace, Cyberabad, APIIC SW Unit Layout, Madhapur, Hyderabad - 500081 and to produce all the necessary documents as a defense witness to prove the nexus between the put up witnesses and also to prove his innocence before the trial Court.

2. The respondent police registered a case against the petitioner and four others in Crime No.1352/2013 under Sections 120B, 109, 341, 302 r/w 34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). After completing the Investigation, laid a charge sheet before 23rd Metropolitan Magistrate and taken on file in PRC.No.80/2015. After completing formalities committed to Sessions Court. The Principal Sessions Court, City Civil Court, Chennai had taken the case on file in S.C.No.348/2015 and made over the same to the First Additional Civil Court, Chennai for disposal in accordance with law.

3. The learned First Additional City Civil Court, Chennai, after completing the formalities framed the charges and also commenced the trial. The petitioner has been arrayed as 5th accused. After completing the prosecution evidence, the petitioner filed the petition under Section 233(3) of Cr.P.C., and the learned First Additional City Civil Court, Chennai dismissed the said petition after enquiry. Challenging the said order, the fifth accused has filed the revision petition before this Court.

4. The learned counsel for the petitioner would submit that the petitioner is a practising advocate in Madurai Bench of Madras High Court, falsely implicated in this case as conspirator under Section 120-B IPC, as A5 in this case. He was implicated only based on Advocate-Police problem which first happened on 15.09.2013 in Kanimadam, Kanyakumari District. Then on 17.09.2013, in the High Court campus, Chennai where one Inspector Sankaranarayanan was arrested and remanded. This main investigating officer Sreenivasan was transferred by way of punishment that is why, by revenge manner of Tamilnadu Police Department, the petitioner was deliberately implicated in this case and the case in Crime No.24/2013, registered against the Sub Inspector of Police, Sankaranarayanan. The said fact was already accepted by the prosecution witnesses. The petitioner is calling the Register of record clerk, George Town Court, Chennai as defence witness, to furnish the copy of the FIR in Crime No.24/2013.

5. He would further submit that only to show financial transaction in this case, A6 was falsely implicated by fake statement recorded under Section 161 Cr.P.C., one Veeramony @ Abraham who was cited as LW-63, but the said financial transaction is only related to company transaction of the friend of the petitioner one Babu. The said money transaction was only given to C and G Textiles Company, Tirupur by Veeramony @ Abraham. But the said fake statement under Section 161 Cr.P.C., was created by Inspector of Police, Sreenivasan, to show as which was done for the occurrence. So to disprove the said

false allegation, the petitioner has sought to issue summons Veeramony @ Abraham to examine as defence witness.

6. Further, he would submit that only P.W.1, P.W.9 and P.W.13 have jointly arranged all those false witnesses in this case, which is revealed by CDR, already sought by the petition under Section 91 Cr.P.C., as well as which was revealed in Facebook details of P.W.9, which was created in his mobile no.9884884818, which was also accepted by him, but denied the allegation and that only two eye witnesses P.W.2 and P.W.3 are Facebook friends of P.W.9 who is the Manager of the deceased. Such a fact was denied by P.W.9, P.W.2 and P.W.3 but their facebook is available in mobile nos. like 9444136159 and 7338868608 and the Mobile number of P.W.2-9677077323, 7397244993 and 7358426789. The said fact was accepted in his cross examination and the allegation was denied and so to disprove the said allegation, the petitioner is calling to produce the facebook details and entire records of these mobile numbers respectively, 9444136159 and 7338868608 for P.W.3, 984884818 for P.W.9 and his e.mali id 258124@gmail.com and mobile number of P.W.2 and also mobile number of P.W.8 in 9444742552 and 9790961410, which is connected with facebook. Hence, to disprove the main allegation against the petitioner, the petitioner is calling the Head of the Facebook India as a defence witness. Further, fair trial is guaranteed under Article 21 of Constitution of India and comes under the Fundamental Rights of accused. Not only fair trial is guaranteed but also full opportunity may be given to prove his innocence.

7. The learned counsel for the petitioner submits that giving opportunity to both sides is also an integral part of the trial. Moreover, it will help to clear any doubt, which will help in favour of accused and hence, such opportunity may not be curtailed, because, he is facing very serious charge under Section 120-B IPC. Therefore, the learned trial Judge failed to consider the above aspects stated by the petitioner in his petition and dismissed the petition on the ground that the petitioner tried to protract the trial and this court has granted time stipulation to dispose the case. However, the petitioner has got every right to prove his innocence and substantiate his defence and right of the accused cannot be curtailed. The learned trial Judge failed to appreciate the same and simply dismissed the petition which warrants interference of this Court.

8. The learned Government Advocate (Criminal Side) would submit that the revision is not maintainable as the impugned order is passed in the petition filed under Section 233 (3) Cr.P.C., which is interlocutory in nature. As per Section 397 of Cr.P.C., revision will not lie against the interlocutory

order passed by the trial Court. Therefore, the revision itself is not maintainable and it is liable to be dismissed. Further, she would submit that the petitioner herein is a person who adopted various practices and strategy to protract the trial proceedings. One such attempt is filing this petition, asking to summon irrelevant and unconnected persons only for delaying and such diversionary practice is adopted by the petitioner. In this case, offence was committed in the year 2013 and due to non cooperation of the petitioner and other accused, the investigating officer was able to file charge sheet only on 06.05.2015 and the case was committed to the Sessions Court only on 28.01.2015 and thereafter, the matter came for trial, the petitioner has filed petitions one after the other and tried to protract the trial. Even this Court in Crl.O.P.No.5541/2021, given direction to the trial Court to proceed further with the final arguments, within a period of 4 weeks from the date of receipt of copy of the order. The order was passed on 25.03.2021. The petitioner has not obeyed the direction given by this Court in the order passed in Crl.O.P.No.5541/2021 dated 25.03.2021; sufficient opportunity was given to the petitioner and the petitioner has availed all the opportunity and also now filing the petition seeking to call for unconnected witnesses which is not relevant to the present case.

9. Regarding the calling of the Head of Facebook for India as defence witness is concerned, the petitioner is attempting a roving enquiry of irrelevant details and trying to intrude in the privacy of individual which cannot be allowed. Facebook friends history, deleted history are inadmissible and irrelevant since any one can create Facebook page with any name, with any photo and it cannot be relied upon. Further he would submit that the witnesses categorically denied all those averments in the cross examination. The petitioner requested the Facebook Head to produce the entire history of some mobile numbers including deleted history, which cannot be provided since facebook is not a mobile service provider. Hence, he cannot be summoned and the trial Court rightly considered all the materials and dismissed the petition filed by the petitioner as it is only vexatious and in order to protract the trial, he has filed one or another petition which is irrelevant to the present case. Therefore, there is no merit in the revision and it is liable to be dismissed.

10. After hearing the arguments of the learned Government Advocate (Criminal Side), though the petitioner counsel has filed the defence witness details and address, he has not pressed the prayer regarding summoning the witnesses 1 and 2 because other accused persons have summoned those witnesses and they have also been cross examined. Now, the learned counsel for the petitioner is only pressing for

summoning of the third witness alone in respect of the Head of Facebook of India.

11. Admittedly, the case in S.C.No.348 of 2015 is pending for trial before the I Additional City Civil Court, Chennai. Further admittedly prosecution evidence was over. Now during the defence evidence, the 5th accused / petitioner herein had filed the petition under Section 233(3) Cr.P.C., and list of witnesses for summoning. Now, the petitioner has not pressed for calling the witnesses in respect of the first two witnesses is concerned. Now only calling the third witness as prayed for and summoning the third witness alone. The petitioner has clearly stated the reasons for summoning the witness in his petition u/s.233(3) Cr.P.C., as well as in the grounds of revision filed before this Court. The learned counsel for the petitioner emphasised that P.W.3, P.W.8, P.W.9 and P.W.13 have all accepted their phone numbers and also accepted that they have Facebook accounts during cross examination. The facebook account created by the accepted phone numbers was accepted in cross examination by PW.3, PW.8, PW.9 and PW13. Once the Facebook account is created with the mobile numbers, it will send an OTP to get activate the account and the same number will be registered in the Facebook account. Once the phone number registered in the Facebook account, if it is searched with the registered phone numbers in the search bar, it will show the account which is linked into these phone numbers. The copies of P.W.2 and P.W.9 facebook details are attached along with the typed set. This proves the nexus between the defacto complainant and other witnesses. So the phone numbers used to open the facebook accounts i.e., 9884884818 regarding PW.9, 9444136159 and 7338868608 regarding P.W.3, 9444742552 and 9790961410 regarding P.W.8 and 9677077323, 7397244993, regarding P.W.2 are very much relevant to the case to prove the real facts. Therefore, it will prove the innocence of the petitioner and also substantiate his defence. Therefore, equal opportunity has to be given to the petitioner also. The trial Court failed to consider these facts and hence, the order passed by the trial court is liable to be set aside.

12. The learned Government Advocate (Crl.Side) would submit that the petitioner has filed petition to protract the case and despite this Court given a direction to dispose the case, within a stipulated time, till date he is not cooperating for concluding the trial and further the facebook is not possible to submit the facebook account as it requires certificate under Section 65B of the Evidence Act. Further it also involves the privacy of individuals. Now the petitioner counsel is not pressing the calling for witness 1 and 2 but only pressing the prayer for summoning the third witness alone and for that he has given the reason that the witnesses P.W.8 and

P.W.9 have created the facebook only for the purpose of implicating the petitioner as accused. The petitioner is also entitled to lead evidence on his behalf and Court has to give opportunity to both the prosecution to establish the case as well as the defence to substantiate his defence. Though the learned Government Advocate would submit that the revision itself will not lie because the order passed by the trial Court is in the nature of the interlocutory order, there is no quarrel over the said position. However, in this regard, the learned counsel for the petitioner has placed reliance on the judgment of the Honourable Supreme Court reported in [1978] 1 SCC (Cr1) 10 [Madhu Limaye Vs. State of Maharashtra]. The learned Government Advocate [Cr1.Side] has placed reliance on the decision of this court reported in CDJ 2012 MHC 5271 [S.Nagarajan and another Vs. The Deputy Commissioner of Police, Coimbatore].

13. Heard both sides and perused the entire materials and also the citations referred to by both the counsel.

14. There is no quarrel over the proposition of law that as against the interlocutory order, no revision would lie. But however, in this case, though in the nature of interlocutory order, it affect the rights of the accused. Therefore, the accused has also got every right to putforth his defence and to prove his innocence and also to substantiate his defence, opportunity should be given to the accused to lead evidence. Therefore, it is the duty of this court to ensure fair trial and also to ensure by giving proper opportunity to both the parties in litigation to substantiate their case. Therefore, in this case, the petitioner has also given reasons for summoning the Head of Facebook of India and he has given the address and also the phone numbers along with entire details, which follows as:-

Witnesses Details and Address:

i) The Register of record clerk,
George Town Court, Chennai - 600 001 to produce
the copy of FIR in Crime No.24/2013.

ii) Mr.C.Veeramony @ Aberaham, 1/446,
G.N.Nagar, Thottathuppalayara, Pooluvapatti
(post), Tirupur - 641 602.

iii) The Head of Face Book for India,
Office at 4th floor, Building-14. Opus Towers,
MindSpace, Cyberabad, APIIC SW Unit Layout,
Madhapur, Hyderabad - 500 081 to produce Facebook
activity details, Friends History, Deleted
History, Entire History for mobile number -
9884884818 (PW9), 9444136159 and 7338868608 (PW-3)
and 9444742552 and 9790961410 (PW-8) and mobile
number of PW-2 9677077323, 7397244993, 7358426789.

15. Since the prayer sought for by the petitioner is not going to cause any prejudice to the prosecution, the trial Court should have given the opportunity to the petitioner as sought for by him. On a perusal of order passed by the trial Judge, this Court finds that the opportunity has been denied to the petitioner. In view of the said reasoning, the order passed in Crl.M.P.No.1575 of 2021 in S.C.No.348 of 2015 by the trial Court is set aside. The Criminal Revision case is allowed with the following directions:-

(1) The First Additional Judge, City Civil Court, Chennai is directed to issue summons to the third witness mentioned in the petition in Crl.M.P.No.1575/2021 in S.C.No.348 of 2015.

(2) The trial Judge is directed to give specific date of appearance of the third witness before the trial Court. On the day when the witness appears, the petitioner is directed to complete his evidence on the same day and the prosecution also shall cross examine the witness on the same day.

(3) In case of failure to appear before the trial Court on summons, the trial Court is directed to issue warrant to the witness to appear before the trial court, to enable the petitioner to examine the witness.

(4) The petitioner is directed to bear the expenses of the witness, as per law. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

AT

To

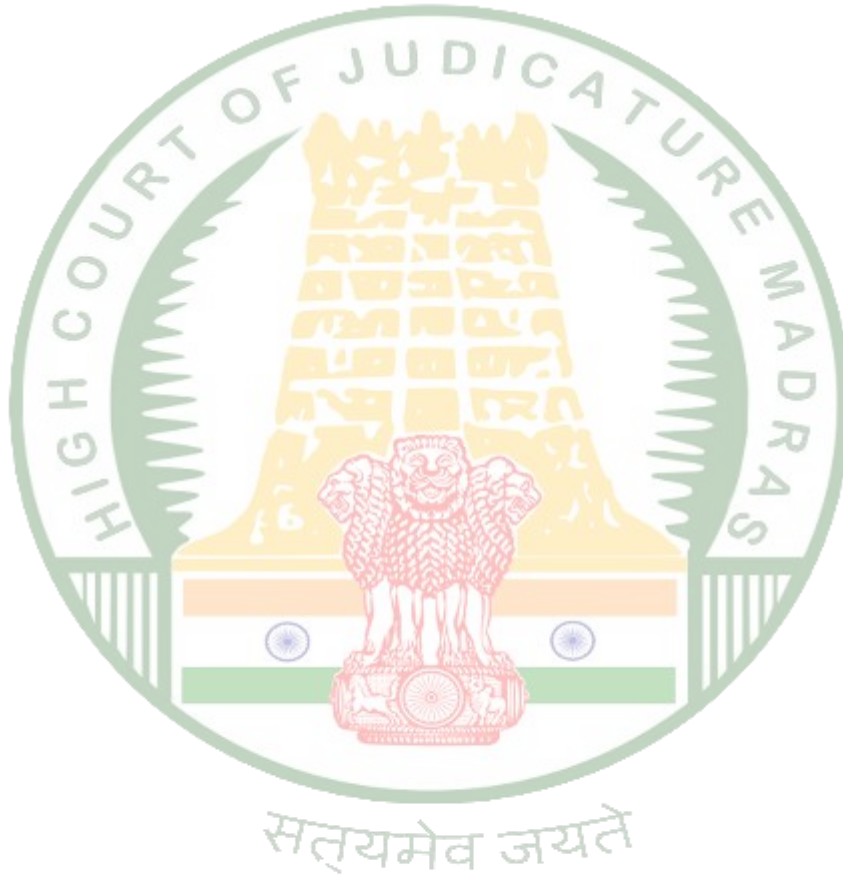
1. The Inspector of Police,
E4-Abhiramapuram Police Station,
Chennai.
2. The I Additional City Civil Court,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

Copy to: The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.Gousik Sundar, Advocate, SR.No.23462.

Cr1.R.C.No.178 of 2021

LN(CO)
CSR 30.04.2021



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