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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.09.2021

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Cr1.RC.No.488/2021 & Cr1.MP.No.7923/2021

[Video Conferencing]

A.Chinnasamy

...Petitioner/Accused

Versus

The Inspector of Police,
Vigilance and Anti-Corruption,
Salem.

...Respondent/Complainant

Prayer : - Criminal Revision Petition filed under Section 397 r/w Section 401 of the Code of Procedure to set aside the order dated 13.07.2020 in the memo in Special CC No.2 of 2015 on the file of the Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act) Salem.

For Petitioner : Mrs.AL.Ganthimathi

For Respondent : Mr.E.Raj Thilak
Government Advocate
Cr1.Side]

ORDER

- (1) The present Criminal Revision has been filed questioning the order dated 13.07.2020 in a Memo filed by the present petitioner/accused in Spl.CC.No.2/2015 which is now pending trial on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, 1988, in Salem District.
- (2) The petitioner is facing trial for the offence under Section 7 read with 13[2] and 13[1][d] of the Prevention of Corruption Act, 1988. Final Report had been filed on



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18.04.2018. Trial had commenced. Since the trial is now underway, it will be extremely inappropriate for me to examine the merits of the rival contentions of either the petitioner or that of the prosecution.

- (3) Be that as it may, during the course of trial, the prosecution tried to introduce a particular document which was dated 14.10.2010. It must be mentioned that in one of the places, the date has also been mentioned as 14.10.2008. At any rate, more importantly, that particular document appear to be a Xerox copy. It was part of a document in a file which file was marked as Ex.C1 series on examination of C.W.1, naturally as it indicates the Court Witness.
- (4) Mrs.A.L.Gandhimathi, learned counsel for the petitioner raised strong objections to the very admissibility of the said document being the Xerox copy and therefore, stated that it cannot even be looked into during the course of trial or at any further point of time. Further, my attention has also been drawn to an internal correspondence dated 12.03.2019 in Na.Ka.No.10/2019/A4 sent by the Tahsildar, Valapadi, to the very Court at Salem, wherein the said Tahsildar had stated that the said letter/document dated 14.10.2010 is not available in the office of the Tahsildar, Valapadi. Pointing out this particular correspondence, the learned counsel for the petitioner stated that the introduction of the said document is a colourable exercise by the prosecution and attacked the very genuinity of the document quite apart from the fact that it is inadmissible owing to the fact that it is a Xerox copy. However, the document as stated, had been marked, viz., given an exhibit number by the Trial Judge. A Memo had been filed by the petitioner/accused raising objections to either receiving of the said document or marking of the said document. The order passed in the said Memo is the subject matter of the present Revision Petition.
- (5) As stated, the learned counsel was agitated over the fact that the learned Judge had taken the said document on record in spite of objections and it is also the grievance of the learned counsel that the objections had not been properly addressed in the order now under question in this



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Revision Petition. The learned Judge, in the course of the order, had stated that the Memo is recorded regarding objections raised by the petitioner in marking the Xerox copy and thereafter, it was stated that the prosecution was permitted to mark the said Xerox copy and the objections raised by the petitioner/accused are recorded.

- (6) It is often seen that when Memos are filed in Trial Courts, a cursory noting is made by the Trial Judges that Memos are recorded and this noting often sends out an ambiguous signal as neither of the parties to the litigation, in this case, the prosecution or the petitioner/accused, know whether the objections have been accepted or the objections have been rejected. Memo is simply taken and put in the Court bundle as one among the other papers. But, more importantly, both the prosecution and the accused should know whether the objections are going to be dealt with at a future date or simply going to be brushed away or have been accepted or have been rejected. It would therefore, be only appropriate that the learned Judge, while stating that the Memo is recorded, should also be little more expressive as to whether objections have been accepted or objections have been rejected or the said objections will be dealt with at a later point of time. The later point of time would arise only when arguments are advanced and judgment is to be pronounced on all aspects surrounding the trial.
- (7) That is the guideline which the Hon'ble Supreme Court of India has laid down in the decision reported in 2001 [3] SCC 1 [Bipin Shanthilal Panchal V. State of Gujarat and Another], which emanated from a criminal case and as a matter of fact, has been a guiding principle during the marking of documents and objections raised while marking of documents and the procedure to be adopted. The Apex Court has very clearly stated that all documents except inadequately stamped documents, can be taken on record subject to objections and those objections should be addressed by the Court at the time of delivering judgments. Therefore, it is also imperative that the learned counsel for the petitioner/accused forward the objections with respect to this particular document even at the time of arguments and invites the learned Judge to give a definite ruling as to whether the learned Judge is relying on the



said document or not relying on the said document while delivering the judgment in the main case.

- (8) As on date, the document has been taken on file and exhibit number has been given. By giving such number, it does not mean that the document has been proved in the manner known to law or that it is relevant to the facts of the case. These are all aspects which will have to be examined only on analysis of all other evidence let in by the prosecution. This is one letter produced by the prosecution among various other documents and its relevancy or otherwise can be examined only on analysis of all the evidence, both oral and documentary let by the prosecution.
- (9) But, let me restrict the evidence of the prosecution with respect to the explanation regarding non production of the original of this particular document since that onus was on C.W.1 when the document was produced. C.W.1 has tendered in the chief examination, a particular explanation, as to why the original document has not been produced. That explanation should stand and that explanation should be tested during the course of cross-examination. The prosecution cannot build any further on that particular explanation. Let the arguments be advanced with respect to the admissibility of the said document. The document, as seen, is a secondary document and the original has not been produced and nobody knows where the original is. Therefore, these are aspects which are to be addressed during the course of arguments. The petitioner herein can also cross-examine the witness on the original of the said document and on its availability or non - availability. These are all the issues which can be thrashed out only at the time of trial.
- (10) I am confident that the learned Judge would give full opportunity to both the prosecution and the accused to do their best during the course of trial. Let the document stand as it is. But, its admissibility, proof and relevancy should be addressed at the time of pronouncing the main judgment after conclusion of trial. The learned Judge may also take up the issue of putting questions to the accused on conclusion of witness for the prosecution with respect to this particular document also under Section 313[1][a] of Cr.P.C.



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(11) Though the relief sought in the Revision Petition is not granted, the Revision Petition stands disposed of, reverting the parties back to the Trial Court. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

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Sub Assistant Registrar

AP

To

1. The Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act),
Salem.
2. The Inspector of Police,
Vigilance and Anti-Corruption,
Salem.
3. The Public Prosecutor
High Court, Madras.

+1CC to M/s.A.L.Ganthimathi, Advocate, SR.No. 44127

Cr1.RC.No.488/2021

CA(CO)
B.VC (21/10/2021)