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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2021

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CRL.O.P.NO. 20537 OF 2021

AND

CRL.M.P.NO. 11168 OF 2021

Madhaiyan,
S/o. Narasimha Naidu

... Petitioner/Accused

Versus

The State,
by Inspector of Police,
Vigilance and Anti-Corruption Unit,
Salem.
(Crime No.8/AC/2015)

... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the order dated 29.03.2021 made in Memo in Spl C.C.No.2 of 2016 on the file of the Special Judge (Special Court for trial of cases under the Preventioin of Corruption) Act, Salem, set aside the same.

For Petitioner : Mr.M.Devaraj

For Respondent : Mr.C.E.Pratap
Government Advocate

ORDER

(This case has been heard through video conference)

Challenging the order passed by the trial court permitting the prosecution to mark a Compact Disc (CD) along with a certificate issued under Sec.65-B of Evidence Act, the accused is before this court with this Criminal Original Petition.

2. Mr. M.Devaraj, learned counsel appearing for petitioner would content that the CD sought to be marked alleged to have contained voice recording of the accused. However, the original



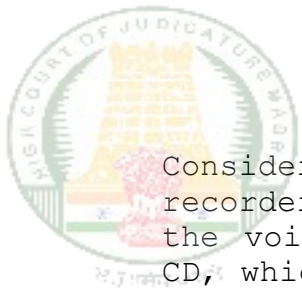
voice recorder was not marked before this Court, and only the CD marked along with a certificate issued under Sec.65-B of Evidence Act is not permissible. However, the trial court, without considering the same rejected his contentions.

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3. Heard the submissions and perused the records.

4. The petitioner stood charged with for the offence under Sec. 7 and 13(2) r/w 13 (1)(d) of Prevention of Corruption Act. During trial, the prosecution sought to mark the CD containing voice recording of the accused along with the certificate issued under Sec.65-B of Evidence Act, by the Investigating Officer. According to the petitioner, even as per the prosecution, the original voice recorder is not available and without marking the original voice recorder, the CD cannot be marked before this Court. The contention of learned counsel appearing for petitioner cannot be countenanced for the simple reason that, the CD was already produced before the trial court along with the F.I.R. However, due to oversight, CD was not marked. Only during trial, the CD along with the certificate issued under Sec.65-B of Indian Evidence Act was produced. The certificate issued by the authority reads as follows :-

"I, M.Natarajan, Inspector of Police, working in the Directorate of Vigilance and Anti-Corruption since 17.08.2009 and being conversant with the operation of computer and its hardware, hereby certify that I have transferred the audio that was recorded in voice Recorder CENIX bearing Sl. No.2GB/B9M0198 (recorded on 05.05.2015 between 16.00 hours and 16.05 hours) to the ACER Desktop computer bearing Sl.No.AWP23GT525A078607ZE which belongs to the DVAC, Salem detachment, thereafter copied the relevant portion of the said audio (i.e. voice conversation between the complainant Tr.K.Pachamuthu and accused Tr.N.Mathaiyan) in a "moserbaer PRO compact disc recordable 80 Min 700 MB" on 05.05.2015 between 16.30 hrs. and 18.00 hrs. without causing any addition, deletion or correction etc. to its original version. Further, it is certified that the contents in the CD is the true reproduction of the original contents (with respect to relevant portion) of the voice reoder to the best of my knowledge and belief. It is also certified that the conditions laid down in Section 65B(2) (d) of the Indian Evidence Act, 1872 regarding the admissibility of computer output in relation to the information and the computer in question are fully satisfied in all aspects."



Considering the certificate, it is clear that, the voice recorder is very much available with DVAC, Salem detachment, and the voice recorder need not be produced before this court. The CD, which contains the relevant portion of the audio, along with the certificate is sufficient and there is no necessity to produce the voice recorder. The Trial Court had considered all those aspects, permitted the prosecution to mark it as evidence. Hence, I do not find any infirmity in the order passed by the trial court and I find no merit in this petition. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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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.M.Devaraj, Advocate, S.R.No.58096

CRL.O.P.No. 20537 of 2021

RSI (CO)
RLP (03/12/2021)