

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.Nos.1281 of 2020, 2, 5, 6 & 7 of 2021
and
Crl.M.P.Nos.8995 of 2020, 17, 26, 27 & 29 of 2021

D.Suresh Kuamr Kochar
S/o.Dhanraj Kochar ... Petitioner in Crl.R.C.No.1281/2020

Sarala
W/o.Inderchand Kochar ... Petitioner in Crl.R.C.No.2/2021

Inderchand Kochar
S/o.Dhanraj ... Petitioner in Crl.R.C.No.5/2021

N.Dhanraj Kochar
S/o.Nimichand ... Petitioner in Crl.R.C.No.6/2020

Suresh Kumar Kochar
S/o.Dhanraj Kochar ... Petitioner in Crl.R.C.No.7/2021

Vs.

1.The State,
Rep.by Inspector of Police,
CCB, Chennai - 600 007.

2.Inderchand D.Kochar
S/o.Dhanraj

3.D.Suresh Kumar Kochar
S/o.Dhanraj Kochar

4.Ramesh Kumar Kochar
S/o.Dhanraj Kochar

5.Jithesh Kumar
S/o.I.C.Jain

6.Rajkumari
W/o.Ramesh Kumar Kochar

7.Anitha
W/o.Suresh Kumar Kochar

8.Sarala
W/o.Indirchand Kochar

... Respondent in
Crl.R.C.No.1281/2020 & 6/2021

The State of Tamil Nadu,
Rep.by the Inspector of Police,
CCB, Veperiy, Chennai.

... Respondent in
Crl.R.C.Nos.2, 5 & 7/2021

COMMON PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Cr.P.C. to

(i) call for records in Crl.M.P.Nos.6789, 7161, 7027, 6788 of 2019 & 3658 of 2018 in Crl.A.No.82 of 2017 on the file of the Principal Session Judge of Kancheepuram at Chengalpattu;

(ii) set aside the order dated 08th December 2020 passed in Crl.M.P.Nos.6789, 7161, 7027, 6788 of 2019 & 3658 of 2018 in Crl.A.No.82 of 2017 on the file of the Principal Session Judge of Kancheepuram at Chengalpattu.

(iii) direct the Principal Sessions Judge, Chengalpattu to take additional evidence presented in Crl.M.P.Nos.6789, 7161, 7027, 6788 of 2019 & 3658 of 2018 in Crl.A.No.82 of 2017 on the file of the Principal Session Judge of Kancheepuram at Chengalpattu.

For Petitioners
In Crl.R.C.No.1281/2020,
2, 6 & 7 of 2021 : Mr.A.Ramesh
Senior Counsel for B.A.Sujay Prasanna

In Crl.R.C.No.5 of 2021 : Mr.G.Prabhakar

For Respondent
In both petitions : Mr.A.Madhan
Government Advocate (Crl.Side)
[for R1 in Crl.R.C.No.1281/2020]

COMMON ORDER

WEB COPY

The petitioners are the appellants before the Sessions Court and arrayed as A3, A8, A2 and A1 in the criminal case before the trial Court and the respondent prosecution registered the case against the petitioners herein for the offences punishable under Sections 408, 420, 468 & 120(B) IPC. After trial, the trial Court convicted the petitioners for the offence punishable under Sections 409 IPC r/w. 109 IPC and 120 (B) IPC and sentenced them to undergo Simple Imprisonment for 3 years and to pay a fine of Rs.10,000/- each in default to undergo Simple Imprisonment for 3 months.

2. Challenging the said judgments, all the petitioners have filed a common appeal before the Principal Sessions Court, Chengalpattu, Kanchipuram, in C.A.No.82 of 2017 and during the argument they filed the petitions in CrI.M.P.Nos.6789, 7161, 7027, 6788 of 2019 & 3658 of 2018 under Section 391 Cr.P.C. to adduce additional evidence. After considering the same, the petitions were dismissed. Challenging the same, the petitioners have filed the present revisions.

3. Mr.A.Ramesh, Senior Counsel appearing for Mr.B.A.Sujay Prasana, learned counsel for the petitioners in CrI.R.C.No.1281/2020, 2, 6 & 7 of 2021 would submit that though the petitioners have enough documents to disprove the case of the prosecution and prove the case of the defence, did not file the same as the prosecution has to prove the case beyond reasonable doubt and therefore, they have not filed these documents. However, the trial Court failed to consider the same that the prosecution has miserably failed to establish the case and fastened the liability on the petitioners. The learned District Judge expressed his view that the defence failed to prove their case and therefore, convicted all the accused and at the time of arguments in appeal, the learned District Judge expressed his view that the defence would have disproved the prosecution case by producing necessary documents. The petitioners have ample documents to disprove the case of the prosecution and prove the defence. However, the Appellate Court dismissed the CrI.M.P.s' on the ground of delay and laches and that during the investigation, some of the petitioners approached for quashing the charge sheet and failed and went upto the Supreme Court and they have also faced the trial and that now in order to protract the appeal, they have come forward with the present petition.

4. The Appellate Judge failed to look into the relevant documents and the relevant documents are very much connected to this case. With the above documents, the petitioners would very much establish their defence and it would be helpful to the petitioners and if the documents come to the Court and permitted to be lead in evidence, the judgment would be otherwise and therefore, an opportunity to be given to the petitioners.

5. Mr.G.Prabhakar, learned counsel appearing for the petitioner in CrI.R.C.No.5 of 2021 would submit that he also filed a petition under Section 243(2) Cr.P.C. Even though they filed a petition under Section 243 (2) Cr.P.C. before the trial Court, the trial Court dismissed the petition without looking into the merit of the petition and therefore, he also adopts the argument of the learned Senior Counsel in other aspects.

6. The learned Government Advocate (Crl.Side) would submit that though the petitioners were given sufficient opportunity, they failed to utilize the opportunity and they failed to lead the defence evidence and produce these documents. These documents very much available even at the time of closing the prosecution evidence and posted for defence witness and even in the appeal stage, they have not raised any grounds of appeal and they have not filed any application along with the appeal or on the date of filing the appeal till the closing of the arguments and reserved for judgment. Subsequently for some reason the learned District Judge could not pronounce the judgment and the successor reopened the arguments and at that time after the arguments only, they filed the petitions before pronouncing the judgment and therefore, the Sessions Judge dismissed the petitions on the ground of delay and that to protract the case they filed the petitions. There is no merit in the revisions. Therefore, the revision petitions are liable to be dismissed. During the pendency of the appeal before the learned Sessions Judge, the defacto complainant approached this Court in Crl.O.P.NO.20159 of 2019. This Court directed to dispose of the appeal within a period of three months. After passing of the order by this Court, the petitioners approached the Appellate Court by way of Crl.M.P.Nos.6789, 7161, 7027, 6788 of 2019 & 3658 of 2018 under Section 391 Cr.P.C., to adduce additional evidence. Therefore, the learned Sessions Judge dismissed the petitions.

7. Heard and perused the records.

8. Admittedly, the case was registered against the petitioners for offences punishable under Sections 408, 420, 468 & 120(B) IPC and trial Court after trial convicted the petitioners. Challenging the said conviction, all the petitioners filed the appeal before the learned Sessions Judge in C.A.No.82 of 2017 and the Sessions Judge also heard the argument and reserved for judgments and for some reason the Judge could not pronounce the order. The successor came to the office and re-heard the appeal. Since he raised some queries with the learned counsel for the appellant and the petitioners filed the applications under Section 391 Cr.P.C. to receive the additional evidence and documents. So as rightly pointed out by the learned Senior Counsel that the documents relied on by the petitioners in the applications before the Appellate Court were very much available even before conclusion of trial. However, when the first opportunity was given to the petitioners they have failed to avail the opportunity either to mark the documents with the prosecution witness or whenever they lead the defence evidence. However, without expressing any opinion on the merit of the case and also merit of the documents, this Court finds that since all the documents are related to the case, therefore, in order to give an opportunity to the petitioners, this Court is inclined to allow the revisions and set aside the order passed by the Sessions Court in Crl.M.P.Nos.6789, 7161, 7027, 6788 of 2019 &

3658 of 2018. However, all the documents related to the prosecution were very much available even on the date of commencement of trial. At the time of initiating the proceeding either they should have produced the documents before the prosecution witness during cross examination or the documents in the written statement during the proceeding under Section 313 Cr.P.C. or by examining defence witnesses and since they failed to avail the opportunity available to the petitioners before the trial Court, however, as pointed out by the learned Government Advocate, the petitioners approached more than once, this Court, by way of other applications and also fully participated in the trial and all the opportunity given to the petitioners by the trial Court also, they failed to avail the opportunity. Further it is pertinent to state that even at the time of filing appeal also they have not filed the petitions and produced the documents and there is no such grounds taken in the grounds of appeal.

9. On perusal of the documents submitted by the petitioners, it is seen that they are relevant to the case. Therefore, the order passed by the Lower Appellate Court is set aside. However, the delay is solely on the part of the petitioners. Therefore, this Court is inclined to impose cost of Rs.1,00,000/- to each of the petitioners and the petitioners are directed to deposit the amount to the Corona relief fund within a period of 15 days i.e., on or before 21.01.2021, failing which the revisions shall stand automatically dismissed without any reference to this Court.

10. However, it is made clear that the Lower Appellate Court is directed either to take such evidence itself or direct it to be taken by a Magistrate.

11. With the above observation, these Criminal Revisions are disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bri
To

1. The Principal Session Judge of Kancheepuram at Chengalpattu
2. The Inspector of Police,
CCB, Chennai - 600 007.
+4ccs to Mr.B.A.Sujay Prasanna ,Advocate SR.No. 583,58,581,580
+1cc to Mr.G.Prabhakar, Advocate SR.No. 579

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