



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL. O.P. NO. 16856 OF 2017

AND

CRL.M.P.NO. 10368 OF 2017

S.Ramamoorti

... Petitioner/Accused

Versus

State of Tamil Nadu

Represented by,

The Deputy Superintendent of Police,

Commercial Crime Investigation Wing (CCIW),

Chennai.

... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai-15, dated 18.05.2017 made in Crl.M.P.No.2413 of 2016 in C.C.No.1138 of 2000 and allow this Criminal Original Petition.

For Petitioner : Mr.S.Karthikeyan

For Respondent : Mr.S.Vinothkumar
Government Advocate
(Crl. Side)

ORDER

This Criminal Original Petition has been filed to set aside the order, dated 18.05.2017, passed by the XI Metropolitan Magistrate, Saidapet, Chennai, in Crl.M.P.No.2413 of 2016 in C.C.No.1138 of 2000.

2.This petition has been filed challenging the order passed by the trial Court allowing the petition filed under Section 311 Cr.P.C by the prosecution and also directing the prosecution to re-examine all the relevant witnesses connected to the documents enlisted in the petition.



3. On a perusal of the materials, it is seen that final report has been filed against the accused for the offences under Sections 408 and 477-A of the Indian Penal Code for misappropriation of funds, while he was in service. The prosecution has examined as many as 15 witnesses. However, certain documents seized during investigation, though copies were given to other side, were omitted to be marked through the concerned witnesses. Therefore, a petition under Section 311 Cr.P.C. was filed to recall the Investigation Officer (P.W.14) and mark certain documents listed in the petition through him and the same was opposed by the other side, the petitioner herein, on the ground that P.W.14 was examined earlier on 06.11.2007 and similar petition filed under Section 311 Cr.P.C. on 03.09.2015 and the same was dismissed by the learned Magistrate on 03.09.2015. Therefore, it is the contention of the petitioner that, again, the witness P.W.14 cannot be recalled and documents cannot be marked through him. The learned Magistrate, on considering the gravity of the offence and the nature of the documents available on record, allowed the petition and held that, mere re-examining P.W.14 cannot be useful to the prosecution, as the documents relied upon by the prosecution cannot be proved through him, and therefore, directed the prosecution to examine the relevant witnesses and mark the documents which are sought to be brought on record as Exhibits, as against which, the present petition has been filed.

4. The main contention of the learned counsel appearing for the petitioner is that, similar petition for recall has been dismissed as early as on 03.09.2015, and the present petition has been filed after then Magistrate got changed and though the prosecution has restricted the petition to examine only P.W.14 and file the documents through him, the learned Magistrate has in fact directed the prosecution to recall the other relevant witnesses and mark the documents through them.

5. Further, it is the contention of the learned counsel for the petitioner that, having suffered the order in the year 2015, without filing an appeal or challenging the same, the present petition has been filed only to fill the lacuna in the present case, which would cause serious prejudice to the petitioner herein, and hence, the prosecution cannot be permitted to fill up the lacuna. It is his further contention that the learned Magistrate has passed an order beyond the relief sought for in the petition, and hence, the same is liable to be interfered with.

6. Per contra, the learned Government Advocate (Crl. Side), appearing for the respondent, submitted that, what are sought to be exhibited are only the admitted documents, which were already

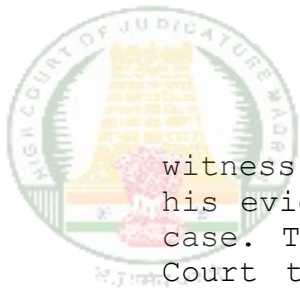


seized during the investigation. He further submitted that, copies were already given to the other side and the documents were already available and extracts in various ledgers have not been marked. Only for that purpose, P.W.14 was sought to be recalled, whereas, the learned Magistrate has taken note of the legal position that P.W.14 is not the author of those documents and the documents cannot be proved through him and hence, directed the prosecution to recall the relevant witnesses, who would be able to prove the documents. Therefore, the learned Government Advocate submitted that there is no illegality in the order and in fact, the Court has ample powers to recall any witness at any time, for administration of justice, hence, prayed for dismissal of this petition.

7. Heard the learned counsel on either side and perused the materials available on record.

8. As rightly pointed out by the learned counsel appearing for the petitioner, the prosecution originally filed the petition in the year 2015 for recall of P.W.14, which was dismissed on 03.09.2015. Thereafter, another petition has been filed before the successor Magistrate for recall of P.W.14, which was allowed by the learned Magistrate. This fact can be seen from the order of the learned Judicial Magistrate. It is relevant to note that the charges against accused are falsification of accounts and misappropriation of funds, while he was working in TANFED (Tamil Nadu Co-operative Marketing Federation Ltd.). All the documents were seized by the Investigation Officer. It is relevant to note that, while examining the witnesses and exhibiting the documents, the learned Public Prosecutor on Government Side has not marked all the documents through the relevant witnesses and omitted to mark certain documents, which have been listed in the petition. Therefore, another petition has been filed by the successor Public Prosecutor realizing the mistake committed by the prosecution and though the relief sought for was only to recall P.W.14, the learned Magistrate, realizing the gravity of the offence and the nature of the documents that are required to be placed on record, has passed the order not only allowing the prosecution to recall P.W.14, but also held that, to prove the entries in the relevant documents, the same have to be proved only through the relevant witnesses, therefore mere recalling P.W.14 will not serve any purpose and accordingly, directed the prosecution to recall all the relevant witnesses and to bring all omitted documents on record.

9. It is to be noted that, under Section 311 of Criminal Procedure Code, any Court, at any stage of enquiry, trial or other proceedings in the Court, can summon any person as a



witness or recall, re-examine any person already examined, if his evidence appears to be essential to the just decision of the case. The very provision under Section 311 Cr.P.C. empowers the Court to recall any witness at any stage of trial at its own instance also. Therefore, merely because the prosecution has filed the petition to recall P.W.14, it cannot be said that, only that witnesses alone should be recalled. When the Court was of the opinion that other persons' evidence was also essential to the just decision of the case and their evidence is required to prove the documents, recalling those witnesses or giving direction to the prosecution to recall those relevant witnesses, in the opinion of this Court, cannot be found fault with.

10.It is to be noted that the trial Court cannot be a mere spectator in the trial proceedings. The trial Judge, in fact, has to participate and see that all the material evidences are brought on record or whether any material evidence which is relevant to decide the case has been omitted by either side. It is the duty of the trial Judge to see that all the material documents which were already available are brought on record as evidence. Therefore, it cannot be expected by the parties that the trial Judge should be a mute spectator, particularly, in a criminal trial.

11.It is also relevant to note that Section 165 of the Indian Evidence Act empowers the Court to put to any question or production of documents. The same reads as follows:

"165. Judge's power to put questions or order production:

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross examine any witness upon any answer given in reply to any such question:

If the Judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if



WEB COPY

the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."

12.Except the cases mentioned in the proviso to Section 165 of the Indian Evidence Act, the trial Judge has ample powers to put any question or order production of any document and neither of the parties shall be entitled to make any objection to such question or the order of the trial court with regard to the documents to be brought on record.

13.This Court is of the view that the order of the trial court for direction to the prosecution to recall all the relevant witnesses to speak about the documents which were already seized during the investigation, and copies were also furnished to the accused, will not prejudice the accused, since accused has right of cross-examination. Such being the position, the order of the learned Magistrate cannot be found fault with.

14.In view of the above, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

15.Having regard to the fact that the criminal trial is pending for many years, the prosecution shall take steps to recall all the relevant witnesses to prove the documents listed in the petition filed under Section 311 Cr.P.C. and complete the process within a period of six (6) months from the date of receipt of a copy of this order and it is made clear that, chief-examination and cross-examination of witnesses shall be completed within a period of six (6) months. Thereafter, the trial Court shall dispose the main case within a period of six (6) months thereafter.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

mkkn/psa



1. The XI Metropolitan Magistrate,
Saidapet.

3. The Public Prosecutor,
High Court, Madras.

MG (CO)
RLP (01/12/2021)