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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.45 of 2022
and
Crl.MP.No.380 of 2022

Zahir Hussain

...Petitioner/Accused

Vs.

The state Rep
The Inspector of Police,
B1 North Beach Police Station,
Chennai (Cr.No.955 of 2013)

...Respondent/Complainant

PRAYER: Criminal Revision is filed under Sections 397 & 401 of Criminal Procedure Code to call for the records in Crl.MP.12173 of 2021 in CC.No.1863 of 2014 on the file of the VII Metropolitan Magistrate, George Town, Chennai.

For Petitioner : M/s.R.Vivekananthan

For Respondent : Mr.S.Sugendran, GA (Crl.side)

ORDER

(The case has been heard through video conference)

The revision has been filed against the order passed by the learned VII Metropolitan Magistrate, George Town, Chennai in Crl.MP.No.12173 of 2021 dated 28.12.2021 dismissing the application filed by the petitioner under Section 294 Cr.PC.

2. The brief facts of the case is as follows :-

The petitioner is sole accused in CC.No.1863 of 2014 pending trial on the file of the VII Metropolitan Magistrate, George Town, Chennai for the offences under Section 448, 341, 323, 355, 506(2) IPC based on the complaint given by the defacto complainant/Srinivasan/PW1. When the case was taken up for arguments, the petitioner had filed petition under Section 294 Cr.PC seeking to mark the certified copy of the order passed by this Court in Crl.OP.No.32232 of 2013 dated 16.09.2014 as Ex.D1. The trial Court holding that documents cannot be marked without examining the witnesses had dismissed the petition against which, the present petition has been filed.



3. Mr. Vivekananthan, learned counsel appearing for the petitioner would submit that the petitioner had filed petition seeking to mark certified copy of this Court order in CrI.OP.No.32232 of 2013 dated 16.09.2014 as Ex.D1. The intention of the petitioner is to mark the same as a 'Document' as defined under section 3 of the Indian Evidence Act, so that the same may be read as evidence. The prosecution had admitted to the genuineness of the documents and as per Section 294(3) Cr.PC, where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it was purported to be signed:

4. He would further submit that the scope of Section 294 is that when a document is filed by the defence, the endorsement of admission or denial by the public prosecutor is sufficient and the defence will have to prove the document, only if it is not admitted by the prosecution. In this case, the document has been admitted by the prosecution and thereby it need not be formally proved and can be read in evidence. The petitioner had sought the Court to read the document in evidence and nothing more, whereas, the trial Court despite prosecution having not disputed the same had dismissed the petition stating that it can be marked only by examining the witnesses. Examination of the witnesses is not necessary when the document is admitted and the contents of the document has also not been denied by the prosecution.

5. The learned counsel would further submit that subject matter of the order in CrI.OP.No.32232/2013 is that the petitioner had given a complaint against the PW1 on 06.12.2013 before the second respondent. Since, the respondent did not register the case, the petitioner had approached this Court in CrI.OP.No.32232 of 2013, seeking for a direction to register a case and the petition was disposed of on 16.09.2014.

6. The learned Government Advocate (CrI.side) would submit that the respondent had filed counter before the trial Court and in the counter, the respondent had admitted that the document sought to be marked is an order of the High Court and it is not disputed. However, he would submit that the documents cannot be exhibited on the side of the defence without examining any witnesses.

7. In reply, Mr. Vivekananthan, would submit that request of the petitioner before the trial Court is to read the 'documents' in evidence and nothing more. In respect of his contention, he would rely on the judgment of the Hon'ble Apex Court in *Shamsher Singh Verma v. State of Haryana* reported in (2016) 15 SCC 485.

8. Heard the counsel and perused the materials available on record.



9. In this case, the petitioner who is an accused has filed a petition seeking to mark the certified copy of the order passed by this Court in CrI.OP.No.32232 of 2013 dated 16.09.2014 as Ex.D1. It is the prayer of the petitioner to read the document in evidence, the respondent had filed a counter and respondent has not disputed the said documents. However, the respondent had stated that allowing the undisputed documents to be filed, cannot mean that it can be exhibited without examining any witnesses.

10. It is relevant to refer to Section 294(3) Cr.PC, which is extracted hereunder :-

294. No formal proof of certain documents.

.....

.....

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

11. As per Section 294(3), when genuineness of any document is not disputed as the document may be read in evidence without proof of the signature of the person to which it purports to be signed. As stated above, the prayer of the petitioner is only to read the documents in evidence

12. In the case of Shamsher Singh Verma v. State of Haryana reported in (2016) 15 SCC 485 the Hon'ble Apex Court has held under :

"11. The object of Section 294 CrPC is to accelerate pace of trial by avoiding the time being wasted by the parties in recording the unnecessary evidence. Where genuineness of any document is admitted, or its formal proof is dispensed with, the same may be read in evidence. Word "document" is defined in Section 3 of the Evidence Act, 1872, as under:

"Document.—'Document' means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations

A writing is a document;

Words printed, lithographed or photographed are documents;

A map or plan is a document;



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An inscription on a metal plate or stone is a document;

A caricature is a document."

14. In view of the definition of "document" in the Evidence Act, and the law laid down by this Court, as discussed above, we hold that the compact disc is also a document. It is not necessary for the court to obtain admission or denial on a document under sub-section (1) of Section 294 CrPC personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/report with which same is filed, is sufficient compliance of Section 294 CrPC. Similarly, on a document filed by the defence, endorsement of admission or denial by the Public Prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the counsel for the complainant in respect of document filed by the defence. "

13. In this case, the genuineness of the document is admitted by the prosecution and thereby it need to be formally proved and it can be read in evidence by the trial Court without proof of signature of the person to whom it purports to be signed.

14. In view of the above, the criminal revision stands allowed by setting aside the order of the learned VII Metropolitan Magistrate, George Town, Chennai made in CrI.MP.No.12173 of 2021 dated 28.12.2021. The petitioner is permitted to exhibit the certified copy of the order passed by this Court in CrI.OP.No.32232 of 2013 dated 16.09.2014 and the trial Court can read it in evidence. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1. The VII Metropolitan Magistrate,
George Town, Chennai.



2. Do Thro The Chief Metropolitan Magistrate,
Egmore, Chennai - 8.

3. The Inspector of Police,
B-1, North Beach Police Station,
Chennai.

4. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.R.Vivekananthan, Advocate, S.R.No.5490

Cr1.RC.No.45 of 2022

CNR(CO)

RGA(14/02/2022)