

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NOS.20389 & 20391 OF 2020

AND

CRL.M.P.NOS.8519 & 8520 OF 2020

1. M.Vellaisamy
2. K.R.Mayalagu

... Petitioners/Respondents/Accused
in both Crl.O.Ps.

Vs

The Sub Inspector of Police
Central Crime Branch, Team - I,
Chennai.
(Crime No.641 of 2003)

... Respondent/Petitioner/Complainant
in both Crl.O.Ps.

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to set aside the orders dated 20.11.2020 passed by the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai in C.M.P.Nos.3608 & 3610 of 2020 in C.C.No.7005 of 2007, respectively.

For Petitioners
in both petitions : Mr.S.Anil Sandeep

For Respondent
in both petitions : Mr.A.Gopinath
Government Advocate (Crl. Side)

COMMON ORDER

The petitions have been filed to set aside the orders dated 20.11.2020 passed by the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai, in C.M.P.Nos.3608 & 3610 of 2020 in C.C.No.7005 of 2007 respectively, thereby ordered to reopen the prosecution and allowed the petition filed under Section 91 of Cr.P.C., to produce the document from the petitioners/ accused.

2. The petitioners are accused and they are facing charged for the offences under Sections 406, 420, 384 r/w 120(b) of IPC in C.C.No.7005 of 2007 on the file of the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai. After completion of prosecution witnesses and defence side witnesses, when the matter was posted for arguments, the prosecution viz., the respondent herein filed petitions to reopen the prosecution case and to produce of documents which mentioned in the petition filed under Section 91 of Cr.P.C. The respondent filed petition under Section 91 of Cr.P.C., for direction directing the petitioners to produce the documents on the ground that the petitioners are in possession of the letter dated 25.10.2005 signed by the defacto complainant, in which witness signature was obtained subsequently from P.W.3, which has been marked as Ex.P.7. The undertaking letter obtained from P.W.3 by the accused stating the amount dueto his was only Rs.17,96,871/-. For production of the said documents, the respondent filed petitions under Section 91 of Cr.P.C., and to reopen the case of prosecution.

3. It is true that the trial Court can very well reopen the case at any stage before delivery of judgment. However, the accused cannot be directed to produce any document to prove the case of the prosecution. The prosecution laid charges as against the accused as such, the prosecution has the duty to prove its case as against the accused persons.

4. In this regard it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India reported in 1980 AIR 185 in the case of V.S.Kuttan Pillai Vs. Ramakrishnan & Anr, which reads as follows :-

'.....Whatever that may be, it is indisputable that according to the majority opinion the expression 'person' in s. 91 (1) (new Code) does not take within its sweep a person accused of an offence which would mean that a summons issued to an accused person to produce a thing or document considered necessary or desirable for the purpose of an investigation, inquiry or trial would imply compulsion and the document or thing so produced would be compelled testimony and would be violative of the constitutional immunity against self-incrimination.

.....

In view of the decision in Shyamlal Mohanlal's case (supra) one must proceed on

the basis that a summons to produce a thing or document as contemplated by s. 91(1) cannot be issued to a person accused of an offence calling upon him to produce document or thing considered necessary or desirable for the purpose of an investigation, inquiry, trial or other proceeding under the Code of Criminal Procedure.

Thus, it is clear that the direction under Section 91 of Cr.P.C., cannot be issued as against the accused calling upon them to produce document. Hence the order passed by the Court below is illegal and liable to be set aside.

5. Accordingly, both the Criminal Original Petitions stand allowed and the orders dated 20.11.2020 passed by the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai in C.M.P.Nos.3608 & 3610 of 2020 in C.C.No.7005 of 2007 respectively, are set aside. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

rts

To

1. The CCB & CBCID Metropolitan Magistrate,
Egmore, Chennai.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The Sub Inspector of Police
Central Crime Branch, Team - I, Chennai.
4. The Public Prosecutor,
Madras High Court, Chennai.

+2ccs to Mr.S.Anil Sandeep, Advocate, S.R.Nos.39019 & 39020

CrI.O.P.Nos.20389 & 20391 of 2020
and CrI.M.P.Nos.8519 & 8520 of 2020

GJ(CO)
RLP(19/07/2022)