



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:19/04/2022

CORAM:

WEB COPY

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.MP(MD)No.7838 of 2021
in
Crl.A(MD)No.533 of 2019

1.T.S.Kumaravel

2.S.Thillai Uma Shanthi @
Uma Shanthi

: Petitioners/Appellants/
Accused A1 and A2

Vs.

The State of Tamil Nadu
represented by its
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Police Station,
Tirunelveli District.
(Crime No.08 of 2008)

: Respondent/Respondent/Complainant

Prayer: Criminal Miscellaneous Petition has been filed under section 391 of Criminal Procedure Code, to pass an order in the instant petition for reception of additional evidence in the pending Crl.A No.533 of 2019.

Prayer in CRL A(MD). 533/ 2019 :

To call for the records of the Judgement dated 04.11.2019 in Special Case No.58 of 2014 on the file of the Special Court for Trial of Cases under prevention of corruption Act, Tirunelveli in Crime No.08 of 2008 dated 17.12.2008 on the file of the respondent police and set aside the same and against the appellant/Accused No.142

For Petitioners : Mr.M.Ajmal Khan
Senior counsel
for Mr.A.Iruthayaraj
For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

O R D E R

This criminal miscellaneous petition is filed under section 391 Cr.P.C to receive the additional evidence in the criminal appeal.

2.The facts in brief:-

<https://www.mhc.tn.gov.in/judis>

The criminal appeal has been filed against the conviction and sentence that has been passed by the trial court by convicting the



1st accused and sentenced to undergo 4 years SI and to pay a fine of Rs,50,000/-, in default to undergo SI for 6 months for the offence under section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act; convicted A2 and sentenced him to undergo 3 years SI and to pay a fine of Rs.10,000/- in default to undergo SI for 6 months for the offence under section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act r/w 109 IPC. The trial court has found that there was disproportionate asset valued about Rs.7,47,938/-. But that amount and the asset was acquired out of the contribution of the second accused parents. But that contention was rejected by the trial court on the ground that the parents of the second accused had no source of income to make such a contribution. The view of the trial court is under challenged now

3.Assailing such a finding only, this criminal appeal has been preferred and this criminal miscellaneous petition has been filed seeking permission to file additional documentary evidence to show that contribution has been made, out of the pensionary benefit, that was derived by the father-in-law. But the prosecution intentionally omitted to mark certain public documents relating to the retirement and pensionary benefits. Now the documents have been collected, which are mentioned in the affidavit. Totally eight documents have been collected and those documents falsify the case of the prosecution.

4.The father-in-law M.Sudalaiyandu died, on 18/08/2020. He was examined, on 08/03/2019 before the trial court. At that time, the documents, which now sought to be produced were not within the knowledge of the petitioners. So, the petitioners were not in a position to produce those documents. Totally, Rs.22,44,225/- was omitted to be included in the retirement benefits and this is in addition to the amount of Rs.28,00,000/- and if these documents are received as additional evidence, as mentioned earlier, the finding of the trial court can be set aside.

5.Counter has also been filed on the side of the prosecution.

6.Heard both sides.

7.During the course of argument, the learned Senior counsel appearing for the petitioners would submit that the document Nos.7 and 8 mentioned in the affidavit are not relevant and in respect of those documents, the petition can be dismissed. But in so far as the other documents are concerned, according to him, those are only public documents, evidentiary value cannot be disputed.

8.The learned Senior counsel appearing for the petitioners would straightaway rely upon the judgment of this court in the case of **State, rep. by Public Prosecutor Vs. Sundar [2021 (5) CTC 140]** and would contend that when the documents sought to be produced are capable of tilting the outcome of the case, then they must be received.

9.No doubt that additional evidence can be received, if the petitioners are able to convince the court to the effect that the delay on their part was not willful and the documents, which sought



to be produced were not available in their hands at the time of trial.

10. The next ingredient is that the documents must be capable of tilting the case in favour of the party, if admitted. These twine conditions must be satisfied.

11. The learned Additional Public Prosecutor would vehemently oppose this petition on the ground of delay. He would further submit that the documents, which now available in the hands of the petitioners, are public documents, which would have been obtained the copy of the same at the appropriate time. According to him, absolutely, there is was due diligence on the part of the petitioners in getting the documents. Having participated in the trial process and having suffered a finding of guilt and sentence, now in order to overcome the finding, these documents sought to be produced. According to him, such a belated attempt on the part of the petitioners should not be permitted and if such sort of practice is permitted, then, according to him, there will be no end to the proceedings.

12. No doubt that the parties must be vigilant and be careful during the course of trial process. Here, according to the petitioners, those documents were not within the specific knowledge of the petitioners during the process of trial and only belatedly, the father-in-law through A2 informed about the availability of the public documents. It is unthinkable that had the petitioners enough knowledge about the availability of the document, according to me, would not have omitted to mark the documents. Because the accused persons will only try to discharge the burden in disproving the case of the prosecution. So when we apply the common sense to this issue, without hesitation, we can hold that the petitioners must be permitted to produce the documents, which according to me, are capable of tilting the case in their favour. Since the trial is the journey towards finding truth, in pursuit of that process, mere delay on the part of the parties should not be given any undue importance. If such sort of attitude is employed, then causality will be the justice. So, I am of the considered view that the documents sought to be produced can be admitted in evidence.

13. Accordingly, this criminal miscellaneous petition is **allowed.**

Sd/-

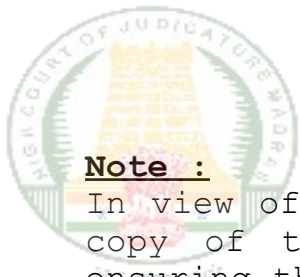
Assistant Registrar (CO)

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/06/2022

Sub Assistant Registrar (CS)

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**Note :**

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judge,
Special Court for Trial of Cases
under Prevention of Corruption Act,
Tirunelveli.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption Police Station,
Tirunelveli District.
- 3.The Superintendent,Central Prison,
Palayamkottai,Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer,Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

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in
Cr1.A(MD)No.533 of 2019
19.04.2022

MGJ(23.06.2022) 4P 7C