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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 25/11/2022

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Crl.RC(MD)No.772 of 2022

Chandran : Petitioner/Petitioner/A3

Vs.

State represented by
Inspector of Police,
Counterfeit Currency Wing,
CBCID, Trichy District.

: Respondent/Respondent/
Complainant

PRAYER:-This Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order passed in Crmp No.144 of 2021, dated 22/04/2022 passed by the II Additional Sub Judge, Madurai.

For Petitioner : Mr.N.S.Mathews
for Mrs.A.Banumathi

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

**ORDER**

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This Criminal Revision has been filed seeking in order to set aside the order in Crmp No.144 of 2021, dated 22/04/2022 passed by the II Additional Sub Judge, Madurai.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that A1 and A2 tried to deposit counterfeit currency notes, on 15/07/2017 around 12.30 pm in the South Indian Bank, Madurai branch. They were apprehended in the spot itself. On the basis of the confession statement given A2, the involvement of A3 came to light. During the course of investigation, A3 who is the petitioner herein was arrested, on 16/12/2017. After completing the formalities of investigation, final report was filed before the committal court and after committal process was over, now the trial process has been undertaken by the II Additional Sessions Judge, Madurai.

3.Pending the above said trial process, petition has been filed in Crmp No.144 of 2021 by this petitioner





7. But the above said xerox machine was not recovered from any one, whether this affects the prosecution case and whether this petitioner can take advantage of the same are all the matters for consideration during trial.

8. This is a case of preparing and circulating the counterfeit currency notes, which eventually affects the economy of the country. The offence of this nature requires thorough enquiry.

9. As stated above, any material is available in the statement of the witnesses namely PW22 and PW24. As rightly observed by the trial court, this petitioner has been roped into the above said offence under section 34 IPC. Whether section 34 IPC is attracted or not is a matter for evidence. The statement of the witnesses Nos. 22 and 24 are also available against this petitioner.

10. Now let us go to the judgment cited by the petitioner.



11.Before that, in the counter statement that has been filed by the prosecution, it has been stated that the petitioner served as Accountant in the Bar Council of Kerala and there is a charge to the effect that he misappropriated the fund namely Advocates Welfare fund Stamps, which were entrusted to him and Vigilance enquiry was also undertaken. He was also placed under suspension. According to the prosecution, the petitioner is not having good conduct of reputation.

12.Now whatever it may be, we shall not be carried away by the conduct. Even in the grounds of revision, the judgment of the Hon'ble Supreme Court reported in the case of ***Mahabir Mandal and others Vs. The State of Bihar (AIR 1972 SC 1331)*** has been mentioned, wherein it has been mentioned that the statement of the witnesses recorded under section 161 Cr.P.C can be used only for the purpose of corroborating under section 162 Cr.P.C. By pointing out this judgment, it has been contended that on the basis of the 161 Cr.P.C statement of the witnesses, no charge can be framed. So this judgment is also cited for the purpose of argument that the statement of the co-accused cannot be taken into account.



13. But at the same time, framing of charges and the statement of the witnesses under section 161 Cr.P.C alone can be made available by the prosecution, the veracity of those witnesses statement can be tested only during the course of cross examination.

14. The next judgment relied upon by the learned counsel appearing for the petitioner is the judgment reported in the case of **Anant Kumar Vs. The State of Madhaya Pradesh (1993 CRL.L.J 1499]**, again for the purpose of argument that since, his name is not mentioned in the FIR, he can not be roped with the aid of the confession statement of the co-accused.

15. The learned counsel for the petitioner has also relied upon the judgment in the case of **Kishan Singh Vs. State of Rajasthan (1995 CRI.L.J 3947)** for the very same point. In that judgment, by relying upon the judgment in the case of in **Gopal Govind Chogale Vs. Assistant Collector of Central Excise, Maharashtra (1985 Cri.L.R (Mah) 495 (Bom.))** it has been held that even for framing of charges, confession statement of the co-accused cannot be taken into account.



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16. Similarly the judgment reported in the case of Manish Jain alias Manish Kumar Jain alias Manish Chandra Jain Vs. State of Jharkhand (2002 CRI.L.J 3980) been relied upon for the purpose of argument that since no recovery has been made from this petitioner, the charge cannot be framed.

17. The judgment reported in the case of Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and another [(2019)16 SCC 547] has been relied upon by the petitioner for the very same purpose. The above said judgment was based upon the foundation case in respect of section 27 of the Indian Evidence Act issue in Pakala Narayana Swami's case. This petitioner has also relied upon another point to the effect that there must be *mens rea* to the above said offence and the principles that got to be followed by the trial court while framing charges has also been discussed elaborately. So this court need not extensively reproduce the observations and the principles that have been set out in verbatim manner. In that case, except the confession statement of the co-accused and the statement of the co-accused, no other material was available. Only at that stage, the accused was



discharged. But here, as mentioned earlier, statement of the witnesses are also there, which cannot be tested for its reliability at this stage. To the same effect, the judgment in the case of State of J & K Vs. Sudershan Chakker and another (AIR 1995 SC 1954) is also to the point. Now the petitioner try to impress upon the court that his name is not mentioned in the FIR and no recovery has been made from him and only the statement of the co-accused is available, which is not permissible under law to implicate this petitioner. We need not reproduce the observation made in the above said case since the statement of witnesses are not available in that case. So I am of the considered view that this is not a fittest case to discharge the petitioner. It has rightly dismissed by the trial court, which requires no interference. So, I find no illegality or irregularity in the order passed by the trial court.

18. In the result, this Criminal Revision fails and the same is **dismissed**.

25/11/2022

Index: Yes/No
Internet: Yes/No

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To,

- 1.The II Additional Sub Judge,
Madurai.
- 2.The Inspector of Police,
Counterfeit Currency Wings,
CBCID, Trichy District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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