



CRL RC(MD). No.848 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved On : 07/09/2022

Delivered on : 12/09/2022

PRESENT

The Hon`ble Mrs.Justice R.THARANI

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and

CrI.M.P.(MD)Nos.10664 & 10666 of 2022

M. Palani,
S/o Muthaiah, No.969, Seevalaperi,
Muppadathi Amman Kovil Street,
Tirunelveli District.. ... Petitioner/Accused

Vs

The Sub Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.
Crime No. 94 of 2022. ... Respondent/Complainant

For Petitioner : Mr. Anand R,
Advocate.
For Respondent : Mr.S.Ravi,
Additional Public Prosecutor



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PRAYER :-

This Revision is filed under Section 397 r/w Section 401 Cr.P.C., to call for the entire records pertaining to the order passed by the III Additional District and Sessions Judge, Tirunelveli in Cr.M.P No. 7324 of 2022 in S.C No. 528 of 2021 vide order dated 24.08.2022 and set aside the same.

ORDER : The Court made the following order :-

This Revision is filed against the order passed by the learned III Additional District and Sessions Judge, Tirunelveli in Cr.M.P.No.7324 of 2022 in S.C No. 528 of 2021 vide order dated 24.08.2022. The prosecution filed a petition under Section 231(1) Cr.P.C., seeking permission to mark 9 documents and to examine 4 witnesses on the side of the prosecution. That petition was allowed by the trial Court. Against the same, the petitioner has filed this revision petition.

2. Brief substance of the petition is as follows:

Copy of the FIR was sent to the Judicial Magistrate No.III through Women Police Constable, by name, Eswari and another Police Constable by name, Rajeswari who was given the duty to attend the post mortem of

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the deceased and the passport issued to both Women Police Constables are to be marked. The erstwhile Investigation Officer examined a police constable by name, Rajesh, on 18.04.2021 and recorded his statement under Section 161(3) Cr.P.C. That statement was not annexed with the charge sheet. The statement of police constable Rajesh and the passport given to both the women constable are necessary to be marked in the case. On 10.03.2016, a complaint was filed by the Trustee of the Sudalaimadasamy temple before the H.R. & C.E Department and an enquiry was conducted in C.S.R.No.41 of 2016. One Murugan filed the complaint before the Seevalaperi Police Station in C.S.R.No.42 of 2016 and on the undertaking given by one Sudalaimuthu, both the petitions were closed and those documents would reveal the previous motive between the accused and the defacto complainant and two previous cases in Crime No.161 of 2018 and 162 of 2018 were registered regarding the temple dispute. Another document is in O.A.No.24 of 1971, dated 24.01.1972, an order passed by the Joint Commissioner of HR & CE Board and is necessary to be marked to prove the previous dispute between the parties and those documents are necessary to be filed in the case. For marking those documents, the official of the HR & CE



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Board, by name, Vellaiah, an Inspector HR & CE Board, by name, Paramasivam and the Sub Inspector of Police and others are to be examined as witnesses.

3. Brief substance of the counter filed by the respondents 1 and 2 is as follows:-

The documents in Crime No.161 of 2018 and 162 of 2018 and C.S.R.Nos.41 of 2016 and 42 of 2016 were already available with the Seevalaperi Police. The erstwhile Investigation Officer failed to investigate regarding this document. The documents are not relevant to the case. Copies of the documents were not furnished to the petitioner and the petition is to be dismissed.

4. Brief substance of the counter filed by the respondents 3 to 5 is as follows:

Already copies of charge sheet was furnished. Charges were framed and the case is pending for trial. At this stage, the prosecution is trying to introduce so many documents. The prosecution ought to have filed a petition for further investigation. Only after recording the



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evidence of witnesses, the documents can be brought on record. Only when the statement of the witness was recorded, the respondent can cross-examine the witnesses and prayed the petition to be dismissed.

5. After hearing both sides, the trial Court allowed the petition. Against the same, the revision petitioner has preferred this revision on the following grounds:

The respondent failed to seek for any permission of the Court to conduct further investigation. After the case was posted for trial, collecting the document and seeking examination of additional witnesses is illegal. By seeking permission to mark 7 documents and to examine 4 more witnesses, the nature of the prosecution case is completely changed. The petition under Section 231 Cr.P.C is permissible, only witnesses, who were already been examined during the investigation and their names were failed to be marked to the list of prosecution witnesses. The trial Court is wrong in allowing the petition as most of the documents sought to be marked were available with the respondent. The erstwhile Investigation Officer failed to collect petition mentioned documents, since they are irrelevant for the case. There is no statement recorded



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under Section 161(3) Cr.P.C, it will be difficult for the accused to cross examine the witnesses.

6. On the side of the petitioner, it is stated that only 6 accused were mentioned in the F.I.R., but the charge sheet was laid against 13 accused. Only at the stage of trial, a petition under Section 231 Cr.P.C, was filed by the prosecution. Already 29 witnesses were mentioned in the list of witnesses. The reason stated by the prosecution is that there was a quarrel during the temple festival in the year 2010 and that there was a dispute between two communities and that there are 2 F.I.Rs against both the parties and that proceedings under Section 110 Cr.P.C., was initiated against both the parties and that there was a dispute regarding laying of a stone in the temple premises and that those documents are to be filed. If at all the documents were already available with the prosecution, the same might have been in the chargesheet.

7. On the side of the petitioner, a judgment of the Hon'ble Supreme Court reported in 2013-5-SCC-762 [Vinay Tyagi V. Irshad Ali @ Deepak and others] is cited.



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8. The investigation officer cannot collect further evidence, under Section 173-A Cr.P.C. If at all, he wants to proceed further, he has to file a petition before the concerned Court and get permission for further investigation. But, the subsequent investigation officer is not permitted to file supplementary charge sheet, only a witness mentioned in the charge sheet alone can be examined. Without recording the 161 statements of the witness, cross-examination of those witnesses is impossible. It will be a prejudice to the accused.

9. Though two sets of counters were filed, the trial Court failed to discuss the objections raised by the accused. The prosecution cannot be permitted to improve the case. The trial Court mechanically allowed the petition. The petition mentioned two passports given to the constables alone can be marked. Since those documents were collected at the time of investigation and are failed to be filed along with the charge sheet, the petitioner has no objection in receiving those two passports.



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10. The citations referred to by the trial Court are not applicable to the facts of the present case. The judgment referred is with regard to a document collected during the investigation and omitted to be filed along with the charge sheet, whereas, the documents to be received by the Court through the relevant petition were not collected during the course of investigation.

11. On the side of the prosecution, it is stated that the documents to be filed are public documents. The erstwhile officer collected those records, but, he omitted to file them before the Court. All the witnesses to be examined are official witnesses. There is no necessity to record their statements under Section 161 (3) Cr.P.C. Only to establish the motive between the parties, these documents are necessary to be marked. This document is to help the Court to come to a just decision and an opportunity for the petitioner to cross-examine the witnesses is available. The documents are filed before the commencement of the trial. The High Court directed the trial Court to conduct the trial on day-to-day basis. Only to delay the trial proceedings, this petition was filed by the petitioner. Already A3 filed transfer O.P petition before the High Court



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and the same was dismissed. The documents were already collected and the witnesses are only official witnesses. No prejudice will be caused to the petitioner. Most of the documents are available in the same police, but, station were omitted to be filed along with the charge sheet. There is no necessity for further investigation. Since further investigation was not necessary, a direction of the Court was not sought for further investigation.

12. On the side of the prosecution, a judgment of the Supreme Court, reported in 2002-5-SC-82 [Central Bureau of Investigation V. R.S.Pai and antothers] is cited, wherein it is stated as follows:-

“Under Section 173(5) and 8 of Cr.P.C, the police report is additional evidence gathered during investigation can be produced by police officer, even after submission of charge sheet. The word shall used in subsection (5) for requiring the police officer to forward to the Magistrate all documents is directory and not mandatory. The interpretation of statutes. Subsidiary rules of interpretation and mandatory or directory.”

“..7. As against this, MR.P.W.Adhyaru, learned Senior Counsel for second respondent submitted that under Section 173(5) Cr.P.C, the investigating officer has



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to produce all the documents at the time of submitting the report. Therefore, the order passed by the Special Court cannot be said, in any way, to be illegal or erroneous.”

13. On the side of the petitioner, it is stated that these documents were not collected during the investigation. Only passport was collected and the petitioner has no objection in receiving the passports as documents. The erstwhile investigation officer never examined the concerned HR & CE official. A letter sent by the Panchayat President to the HR & CE Board is not a public document.

14. The major contention of the petitioner is that remedy available to the prosecution is to file a petition for further investigation and that without such permission, the prosecution has no right to file additional documents or to examine additional witnesses. The contention of the prosecution is that the documents were already available, but, were omitted to be filed along the charge sheet.

15. On the side of the prosecution, it is stated that there is no necessity for further investigation in this case and hence, a petition for further investigation is not at all necessary.



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16. Out of the 9 documents, the petitioner has no objection in marking 2 passports, with regard to the other 7 documents, 2 documents are with regard to the case and counter case between the parties in C.S.R.No.41 of 2016 and 42 of 2016. F.I.Rs in Crime Nos.161 of 2018 and 162 of 2018 are available in the very same police station. Since those documents are very much available in the Station and that those documents are relevant to the present case, they are permitted to be marked. The prosecution want to examine the erstwhile investigation officer, who dealt with the complaint in CSR.Nos.41 of 2016 and 42 of 2016, by name, one Vincent Anbarasi and the erstwhile investigation officer, who dealt with the case in Crime Nos.161 of 2016 and 62 of 2018, by name, Arul George Sahaya Gandhi. To mark this documents, hence, these examination of the 2 investigation officers are necessary.

17. The prosecution wants to mark a document, dated 24.01.1972, a certified copy of order in O.A.No.24 of 1971 passed by the Joint Commissioner of HR & CE Board, and a letter written by the President of a particular community to the HR & CE Board, dated 16.03.2016 and



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the prosecution want not examined 2 of the officials from the HR &CE Department. These documents are with regard to the administration of the temple, which is not the subject matter to be decided in this case. Hence, marking of these 2 documents and examination of official from HR &CE Department is not necessary.

18. It is seen that in W.M.P.No.6490 of 2021 in W.P.(MD)No. 8621 of 2021, dated 26.11.2021, this Court has directed the trial Court to complete the trial on day-to-day basis.

19. Considering the fact that there is a High Court direction to conduct trial on day-to-day basis and considering the fact that the prosecution is having the right to file additional documents and to examine additional witnesses under Section 231 Cr.P.C and considering the fact that the accused will be given a chance to cross-examine the witnesses on the evidence to be adduced, this Court is inclined to modify the order of the trial Court.



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20. The prosecution is permitted to mark the 2 passports given to both the women police constables during investigation and to mark documents regarding Crime Nos.161 of 2018 and 162 of 2018 and CSR.Nos.41 of 2016 and 42 of 2016 and to examine 2 of the erstwhile investigation officers, SI of police, with regard to the above documents. With regard to the examination of the official from the HR & CE Department and with regard to the marking of the documents regarding the temple administration, the petition stands dismissed.

21. With the above modification, this Criminal Revision Case is partly allowed. Consequently, connected Miscellaneous Petitions are closed.

(R T J)
12.09.2022

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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.



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R.THARANI,J

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To

1. The III Additional District and Sessions Judge,
Tirunelveli.
2. The Sub Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
CRL RC(MD) No.848 of 2022

Date : 12/09/2022