



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.02.2022

Pronounced on : 21.02.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.964 of 2021

and

Crl.M.P(MD)No.11698 of 2021

WEB COPY

1.M.S.Granite,
Represented by its Proprietor,
No.2/503, Gross Street,
6th Main Road, Gomathipuram,
Madurai.

2.S.Sankara Narayanan

3.Sri Iswarya Rock Export,
Amman Kovil Patti,
Share Person PKM Selvam Moolamga,
Veerakaliyamman Kovil near,
Keelavalvu,
Melur Taluk,
Madurai.

4.M.PKM Selvam

5.R.Ragu

6.B.Sasikumar

7.A.Mathavan (died)

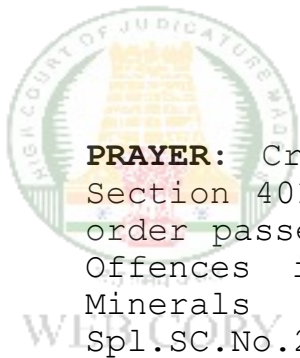
8.A.Joseph John

9.K.Ibrahim ... Revision Petitioners/Respondents/
Accused Nos.1 to 9

Vs.

The State through,
The Deputy Superintendent of Police,
Melur Sub Division,
Madurai District.
(Keelavalavu Police Station
in Crime No.187 of 2012)

.... Respondent/Petitioner/
Investigation Officer



PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, against the impugned order passed by the learned Special Court to Deal with the cases of Offences in Contravention of the Provisions of the Mines and Minerals (D & R) Act, Madurai in Cr.M.P.No.665 of 2021 in Spl.SC.No.24 of 2021, dated 29.11.2021.

For Petitioners : Mr.Niranjana S.Kumar

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

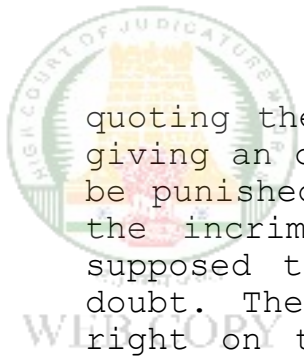
ORDER

This Criminal Revision Case is arising out of the order passed in Cr.M.P.No.665 of 2021 in Spl.SC.No.24 of 2021 on the file of the Special Court to Deal with the cases of Offences in Contravention of the Provisions of the Mines and Minerals (D & R) Act, Madurai, dated 29.11.2021, thereby allowed the petition filed by the respondent to open the case describing the charges brought against the accused by filing the additional documents enumerated in the petition.

2. The petitioners are A1 to A9. The respondent registered the case as against the petitioners in Crime No.187 of 2012 for the offences under Section 120(B) of I.P.C and Section 6 r/w 3(a), 4(a), 4(b) and 5(a) of the Explosive Substances Act, 1908. After completion of investigation, the respondent filed a final report and the same has been taken cognizance in Spl.SC.No.24 of 2021 on the file of the Special Court to Deal with the cases of Offences in Contravention of the Provisions of the Mines and Minerals (D & R) Act, Madurai.

3. The learned counsel appearing for the petitioners would submit that the provision under Section 173(5) of the Code of Criminal Procedure, mandates that the Police Officer, concluding his enquiry, ought to have submitted all the relevant documents which are essential to incriminating the accused, by way of final report. The provision is clear that the interpretation given by the Court below is contrary to law. Further, the provision under Section 173 of Cr.P.C is clear that the intend of the legislature is clear and they have made the provision as a whole and it is self-explanatory.

4. The learned counsel appearing for the petitioners would further submit that the F.I.R came to be registered in the year 2012 and after a lapse of 8 years, the respondent completed the investigation and filed final report. It contains documents, statement of witness and the trial Court had taken cognizance. Thereafter, the copies were also served as contemplated under Section 207 of Cr.P.C. Therefore, at the time of evidence, the respondent filed the petition to mark additional documents that too

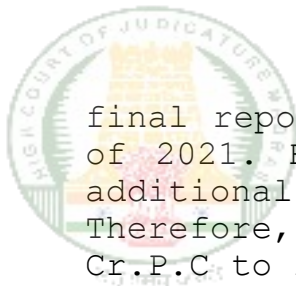


quoting the wrong provision under Section 231(1) of Cr.P.C without giving an opportunity to deal with the documents. No innocent should be punished and the duty is cast upon the prosecution to establish the incriminating material by oral and documentary evidence and supposed to prove the case against the accused beyond reasonable doubt. The Article 21 of the Constitution of India guarantees a right on the accused in order to ensure a free and fair trial. Therefore, the additional documents filed by the respondent cannot be accepted and it causes prejudice to the accused.

5. Per contra, the learned Additional Public Prosecutor filed the counter-affidavit and submitted that after registration of F.I.R against the petitioners in Crime No.187 of 2012, completed the investigation and filed a final report. On the investigation, examined 24 witnesses and collected sufficient documents and filed in the form of final report. The same has been taken cognizance by the trial Court to frame charges against the accused. The prosecution has filed 12 copies of the documents and the original documents were already filed in Crime No.196 of 2012 and it is pending committal in P.R.C.No.22 of 2021. At the time of filing final report, the Investigating Officer inadvertently failed to annex 12 documents along with the final report. On scrutiny of entire records, it came to understand about the documents which are very essential to establish the case of the prosecution. All the documents are available in the Case Diary and have only been missed to be filed before the trial Court. Further, all the documents are public documents and there is absolutely no prejudice to be caused to the accused persons, if those documents are allowed to be marked on the side of the prosecution.

6. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent and perused the entire materials available on record.

7. On a perusal of the materials available on record revealed that the complainant, one Chandra Murugesan, lodged a complaint on 02.09.2012 alleging that on 02.09.2012 at about 11.00 a.m., on information, the complainant along with his team including sniffer dog went to Ishwarya Granites near Veerakaliyamman Kovil, Keelavalavu and searched with the help of EVD instrument and sniffer dog and found explosives (approximately 3 kgs of gun powder) in the south east of Ishwarya granites in the small shed. It was seized and handed over to the Keelavalavu Police Station and lodged the complaint. On the complaint, the case has been registered against the petitioners for the offence under Sections 4 and 5(a) of the Explosive Substances Act, 1908. The Investigating Officer took up the investigation and had sent the gun powder to the Forensic Science Department. On the certificate issued by the Forensic Science Department, dated 26.11.2012, found that when exploded may endanger human life and properties. The Investigating Officer, after examining 24 witnesses and collecting sufficient documents, filed



final report and the same has been taken cognizance in Spl.SC.No.24 of 2021. However, the documents which are sought to be marked as additional documents were not annexed along with the charge sheet. Therefore, the respondent filed a petition under Section 231(1) of Cr.P.C to receive documents.

WEB COPY

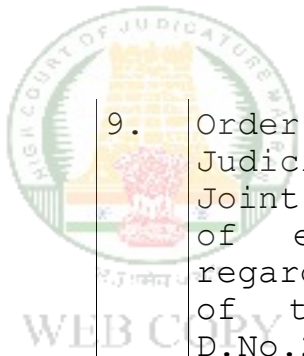
8. The learned counsel appearing for the petitioners raised the ground that only on further investigation, the additional documents can be filed along with additional charge-sheet. The petition under Section 231(1) of Cr.P.C is not at all applicable to receive the additional documents. In this regard, the learned counsel appearing for the petitioners relied upon the Judgment of the Honourable High Court of Bombay, Nagpur Bench at Napur in the case of ***Bhagyashree Prashant Wasankar Vs. The State of Maharashtra in Crl.W.P.No.688 of 2020***, in which held that there is no provision available for a witness to directly seek production of additional documents during the course of sessions trial and at the time of recording evidence. Permitting such production of additional documents by the witnesses directly would prejudice the accused persons by depriving them of a fair opportunity to prepare their defence. The additional documents could be produced by following the procedure of further investigation as contemplated under Section 173(8) of Cr.P.C.

9. The learned counsel appearing for the petitioners also relied upon the Judgment reported in ***(2021) 10 SCC 598 - Criminal Trials Guidelines Regarding Inadequacies and Deficiencies Vs. State of Andhra Pradesh and others***, in which, the Honourable Supreme Court of India held that while furnishing the list of statements, documents and material objects under Sections 207 and 208 of Cr.P.C, the Magistrate should also ensure that a list of other materials should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under Section 91 Cr.P.C for their production during during the trial in the interest of justice. Whereas in the case on hand, the documents sought to be produced are as follows:-

Sl. No.	Nature of Documents	Date of Document	Document Pending in	Other Remarks
1.	Proceedings of the Superintendent of Police Madurai District to appoint DSP Melur Sub-Division as in-charge officer of the above case in C.No.C1/028222/SP-MD/2017, dt:03.07.2017	03.07.17	Document pending in Keelavalavu P.S.Cr.No.19 6/20212	Total Sheet - 1



2.	G.O (3D) No.118 Industries (MMB-1) Department for Grant of lease to quarry Multi Colour Granite to MS granites company, Madurai.	05.05.95	Document pending in keelavalavu P.S.Cr.No.19 6/20212 (item No.1)	Total Sheet-4
3.	Lease Agreement Deed between District Collector and MS Granites Company proprietor Shankara Narayanan.	18.05.1995	Document pending in Keelavalavu P.S.Cr.No.19 6/20212 (item No.4)	Total Sheet-20
4.	A- Register of Keelavalavu Village SF.No.267/2 regarding-Government land.	--	Document pending in Keelavalavu P.S.Cr.No.19 6/20212 (item No.16)	Total Sheet-1
5.	Partnership Deed between Shankaranarayanan and P.K.M Selvam for Sri Aiswariya Rock Export.	01.04.01	Document pending in Keelavalavu P.S.Cr.No.19 6/20212 (item No.12)	Total Sheet-4
6.	Mining Mate Certificate of Madhavan.	-	Document pending in keelavalavu P.S.Cr.No.19 6/20212 (item No.21)	Total Sheet-1
7.	Order passed by the Learned judicial Magistrate Melur to Meenakshisundara Nadar & sons dated:-08.11.2012	08.11.2012	Pending in the JM court Melur	Total Sheet-1
8.	Reply given by Meenakshisundara Nadar & sons to the Learned Judicial Magistrate Melur dt:01.02.2014.	01.02.14	Pending in the JM court Mellur	Total Sheet-1



9.	Order passed by learned Judicial Magistrate to Joint chief controller of explosives Chennai regarding safe custody of the explosives in D.No.2568 dt:05.07.2014.	05.07.14	Pending in the JM court Melur	Total Sheet-1
10.	Letter given by controller of explosives Chennai to General Manager, Vellore.	12.07.14	Pending in the JM court Melur	Total Sheet-3
11.	Acknowledgment given by Chief Controller of Explosives Chennai regarding under safe custody of Tamilnadu indl.Expl.Ltd Vellore.	05.08.14	Pending in JM court Mellur	Total Sheet-1
12.	Paper news - photo - regarding destroying of explosive substances	-	-	Total Sheet-1

10. On perusal of those documents revealed that all are public documents which were essential in the interest of justice to prove the case of the prosecution. In fact, those documents were already produced in pursuant to the final report filed in Crime No.196 of 2012 and it is pending for committal in P.R.C.No.22 of 2021, in which, the petitioners are accused. That apart, the prosecution was permitted to file additional documents on the premise that nothing in Cr.P.C would prohibit the prosecution in doing so after filing the charge sheet. During the course of the trial, if the prosecution thinks it necessary to file additional documents or the statements of the witnesses, which may be material and therefore, seek to rely, the sub-Section 173(8) of Cr.P.C does not prevent the prosecution from filing such documents. But it certainly casts an obligation on it, that when such documents are sought to be filed, the copies thereof must be supplied to the accused in advance so that the defence may not be taken by surprise and may be prepared to contradict or to make use of the same. An omission to file documents with the charge sheet is a mere irregularity under Section 465 of Cr.P.C. Therefore, the Judgments cited by the learned counsel for the petitioners are not helpful to the case on hand. That apart, the documents which are sought to be placed before the trial Court pertain to the previous investigation which are available in the Case Diary and have only been missed to be filed before the trial Court. It would not cause any prejudice to the petitioners.

11. In view of the above, this Court finds no infirmity or irregularity in the order passed in Cr.M.P.No.665 of 2021 in Spl.SC.No.24 of 2021 on the file of the Special Court to Deal with



the cases of Offences in Contravention of the Provisions of the Mines and Minerals (D & R) Act, Madurai, dated 29.11.2021 and this Criminal Revision Case is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

WEB COPY

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps

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 Special Court to Deal with the cases
of Offences in Contravention of the Provisions
of the Mines and Minerals (D & R) Act, Madurai.
- 2.The Deputy Superintendent of Police,
Melur Sub Division,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper
Criminal Section
Madurai Bench of Madras High Court(2 copies)

+1 CC to M/s.NIRANJAN S KUMAR, Advocate (SR-7666[F] dated
22/02/2022)

Order made in
Crl.R.C(MD)No.964 of 2021
21.02.2022

sk(CO)

TR(03.03.2022) 7P 7C