



Crl.O.P.Nos.15985 and 16749 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM :

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

**Crl.O.P.Nos.15985 and 16749 of 2023
and Crl.M.P.Nos.10000 and 10754 of 2023**

1. P.Umashankar
2. Thirumathi

**.. Petitioners
in both Crl.O.Ps**

Versus

1. K.M.Niwas
2. M/s.M.P.Shan Tex Private Limited,
Represented by Official Liquidator,
High Court,
Chennai.

Palanisamy (Died)

**.. Respondents
in both Crl.O.Ps**

Prayer in Crl.O.P.No.15985 of 2023 : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to allow the present petition and set aside the order passed in Crl.M.P.No.5176 of 2022 in C.C.No.258 of 2014 by the Fast Track Judicial Magistrate Court, Tirupur.

Prayer in Crl.O.P.No.16749 of 2023 : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to allow the present



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petition and set aside the order passed in Crl.M.P.No.5179 of 2022 in C.C.No.258 of 2014 by the Fast Track Judicial Magistrate Court, Tirupur.

For Petitioners : Mr.Sarath Chandran
(in both Crl.O.Ps) for Mr.A.Shamsudeen Raja

For Respondents : Mr.E.V.Chandru
(in both Crl.O.Ps) for Mr.G.R.Deepak, for R1

COMMON ORDER

These petitions have been filed seeking to set aside the orders passed in Crl.M.P.Nos.5176 and 5179 of 2022 by the Fast Track Judicial Magistrate Court, Tirupur.

2. These cases were heard finally on 11.09.2023 and final order was passed by allowing the petitions and directing the Court below to complete the proceedings within a period of four weeks in the following terms:-

"These criminal original petitions have been filed challenging the order passed by the Court below in Crl.MP.Nos.5176 and 5179 of 2022 in C.C.No.258 of 2014, allowing the application filed to reopen the case and to recall PW.1 for marking the certificate u/s.65-B of the Indian Evidence Act, 1872.

2.When the criminal original petitions came up for hearing on 31.7.2023, this Court passed the following order:

These Criminal Original



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*Petitions have been filed challenging the orders passed by the Court below allowing the applications filed under Section 311 of Cr.P.C., to recall P.W.1 and to mark 65B certificate for Ex.P47. The learned Counsel for the petitioner is directed to produce the copy of the deposition of P.W.1. If Ex.P47 has been marked without the petitioner raising any objection for the non-filing of 65B certificate, no useful purpose will be served in passing any further orders since the document has already come in as evidence and the accused person has missed the bus in not objecting while marking the electronic evidence. The law on this issue is settled by the Hon'ble Apex Court in **Sonu Vs. State of Haryana** reported in (2017) 8 SCC 570 and the same has been followed by the Division Bench of this Court in a recent judgment in **Yuva Raj Vs. State** in Crl.A.(MD).Nos.228 of 2022 etc., (batch cases) reported in **2023 SCC OnLine Mad 3621**. The learned Counsel sought for some time to get the deposition of P.W.1 and particularly while marking Ex.P47.*

Post this case under the same caption on 04.08.2023.

3.These petitions were thereafter posted for hearing on 04.08.2023 and the learned counsel for the petitioners by pointing out to the deposition of PW.1 drew the attention of this Court to the objection that was specifically raised while marking Ex.P.47 without the same accompanied by a 65-B certificate.



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4. Heard Mr. Sarath Chandran, learned counsel for the petitioner and Mr. G.R. Deepak, learned counsel for the 1st respondent.

5. The short issue that arises for consideration in these petitions is as to whether the Court below was right in allowing the applications and reopening the case for recalling PW.1 to mark the 65-B Certificate for Ex.P.47.

6. There is no dispute with regard to the fact that Ex.P-47 is an electronic record. In the light of the judgement in **Arjun Panditrakhotkar v. Kailash Kushanraogorantyal and Other** reported in (2020) 5 CTC 200, a certificate u/s.65-B(4) is a condition precedent to the admissibility of evidence by way of an electronic record. This judgement has reiterated the earlier view taken by the Apex Court in PV Anwar Case.

7. When Ex.P-47, which is an electronic record was marked through PW.1, specific objection was raised on the side of the petitioners regarding the admissibility since it was not accompanied with a certificate u/s.65-B(4) of the Evidence Act. It is apparent from the order passed by the Court below that the final arguments were heard from both sides and the case was at the stage of pronouncing final judgment on 20.6.2022. At this stage, the applications came to be filed by the respondent to reopen and to recall PW.1 for marking the certificate u/s.65-B(4) for Ex.P.47. It is true that even if the certificate is not marked along with the electronic record, the same can be marked subsequently. This issue was also dealt with by the Apex Court in **Arjun Panditrao Khotkar**



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referred supra and for proper appreciation, the relevant portion is extracted hereunder:

“57. Subject to the caveat laid down in paragraphs 50 and 54 above, the law laid down by these two High Courts has our concurrence. So long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted, and relied upon in evidence.”

8.It is clear from the above that the Certificate can be produced before the Trial Court at any stage, so long as the hearing in a trial is not yet over. To understand as to when the trial gets over, a reference can be made to Section 353 Cr.PC. On a plain reading of this provision, it is clear that the judgement in every trial is pronounced after the termination of the trial. In other words, a case reaches the stage of judgement only after the termination of the trial. In this case, the trial stood terminated the moment the Court below reserved the case for final judgement on 20.6.2022. In the light of the judgement of the Apex Court, a Certificate cannot be brought in after the trial is over. In view of the same, the Court below was not right in entertaining the applications filed by the respondent to reopen and to recall PW.1 for marking the 65-B Certificate. The Court below did not properly appreciate this position of law and had proceeded further to allow the applications and permitted the respondent to mark the Certificate u/s.65-B(4) of the Indian Evidence Act, 1872.



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9.The upshot of the above discussion is that the Order passed by the Court below in Crl.MP.Nos.5176 and 5179 of 2022 dated 14.6.2023 is hereby set aside. It is made abundantly clear that the Order passed in these quash petitions confine itself only to the maintainability of the applications filed by the respondent to reopen the case after it was reserved for judgement for marking Certificate u/s.65-B(4) of the Indian Evidence Act, 1872. All the other issues that are raised by either of the parties before the Court below will be considered on its own merits and in accordance with law and this Order will not have any bearing.

10.In the result, these criminal original petitions stand allowed and there shall be a direction to the Court below to complete the proceedings in C.C.No.258 of 2014, within a period of four weeks from the date of receipt of copy of the order. Consequently, connected miscellaneous petitions are closed."

3. On the next day (i.e.,) on 12.09.2023, a mention was made by the learned Counsel for the petitioners to the effect that the view taken in these petitions is contrary to the view taken by the learned Single Judge of this Court in **Gunasekaran Vs. State** reported in **2007 Cri.L.J. (NOC) 731 (MAD.)**. Therefore, the learned Counsel submitted that the matter may be posted under the caption "For Clarification". Accordingly, the case was posted under the caption "For Clarification" today.



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4. The learned Counsel for the petitioners fairly submitted that the *contra* view taken by another Single Judge in ***Gunasekaran***'s case (referred *supra*) was not brought to the notice of this Court. That apart, the learned Counsel also cited three more judgments of the High Court of Rajasthan, the High Court of Karnataka and also the Division Bench of the High Court of Kerala where *contra* view has been taken.

5. The learned Counsel for the respondents brought to the notice of this Court the judgment of the Constitution Bench of the Hon'ble Apex Court in ***Sukhpal Singh Khaira Vs. The State of Punjab*** in Crl.A.No.885 of 2019, dated 05.12.2022. The learned Counsel specifically placed reliance upon paragraph Nos.20 to 27 of the judgment. It was submitted that as per the Constitution Bench judgment, the trial is concluded only after the conviction and sentence is pronounced through a judgment. Till then, the trial is deemed to be continuing.

6. In the light of the above judgments and particularly, the judgment of the Constitution Bench in ***Sukhpal Singh Khaira***'s case (referred *supra*),



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the order passed by this Court on 11.09.2023 has to be necessarily reversed.

Since the order was not signed by this Court, it will not amount to reviewing the earlier order passed on 11.09.2023.

7. The conspectus of the above discussion is that the order passed by the Court below in Crl.M.P.Nos.5176 and 5179 of 2022 in C.C.No.258 of 2014, dated 14.06.2023 is hereby sustained and these Criminal Original Petitions are dismissed. There shall be a direction to the Court below to complete the proceedings in C.C.No.258 of 2014 within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

15.09.2023

Index : yes
Speaking order
Neutral Citation : yes
grs

To

The Fast Track Judicial Magistrate Court,
Tirupur.



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N.ANAND VENKATESH, J.

grs

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