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Criminal Original Petition No.16814 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Criminal Original Petition No.16814 of 2023

and

Crl.M.P.Nos.10813 & 10815 of 2023

G.Venugopal
S/o.T.T.Girirajan

... Petitioner

vs.

1.State through the Inspector of Police,
W22-All Women Police Station,
Mylapore, Chennai - 4.

2.Manjula
D/o.Late Satya Narayanan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for records and quash the proceedings in C.C.No.4863 of 2017 on the file of XVIII Metropolitan Magistrate, Saidapet.

For Petitioner : Mr.R.Chandra Sudan

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor [R1]



ORDER

WEB COPY This Criminal Original Petition has been filed to quash the proceedings in C.C.No.4863 of 2017 pending on the file of the XVIII Metropolitan Magistrate, Saidapet.

2. The petitioner is facing trial before the Court below for offences u/s.498-A and 506(ii) IPC. The petitioner had earlier filed CrI.O.P.No.23595 of 2017 to quash the proceedings in C.C.No.4864 of 2017. This Court dismissed the petition and gave liberty to the petitioner to raise all the grounds before the trial Court. Accordingly, the trial commenced and the *de facto* complainant was examined as PW-1 on 03.03.2022. Thereafter, the *de facto* complainant was once again examined on 02.08.2022. At that time, apart from the two documents that formed part of the final report, which were furnished to the petitioner u/s.207 Cr.P.C., four more documents were marked through PW-1 as Exs.P3 to P6. The petitioner has raised a ground that PW-1 is now going ahead with a completely new version and thereby defeating the right of the petitioner to effectively defend himself in this case and hence, this quash petition has been filed before this Court.



3. Heard Mr.R.Chandra Sudan, learned counsel for petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor, appearing for first respondent.

4. Learned counsel for petitioner at the time of arguments submitted that the petitioner is only aggrieved by the fact that Exs.P3 – P6 were marked without putting the petitioner on notice and that those documents did not even form part of the final report. In view of the same, it was contended that the petitioner is not able to effectively defend himself in the case.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. At the time of filing the final report, apart from the statements of the witnesses, only two documents were filed and a copy of the same was furnished to the petitioner u/s.207 Cr.P.C. At the time of chief-examination of PW-1, four new documents have been introduced and have been marked as Exs.P3-P6.

7. In the considered view of this Court, there is no bar for the prosecution to mark documents which do not form part of the original final report.



However, new documents cannot be marked straightaway and the accused person must be put on notice. Therefore, whenever new documents are marked, an application u/s.311 Cr.P.C. must be filed. The law on this issue has been discussed in detail by this Court in ***K.Ravichandran v. The Inspector of Police, TMCH Police Station, Thanjavur [2018 (2) LW (Crl.) 944]***. This Court has considered the issue as to whether a person, who is not shown in the list of witnesses can be examined by the prosecution. This Court after considering the law on the issue held that the scope of Section 311 Cr.P.C. is very wide and the power can be exercised at any stage in order to meet the ends of justice. This will equally apply even where the prosecution is seeking to bring in new documents. What has to be ensured is that the accused person is put on notice before any new documents are introduced or new witnesses are examined. The accused person should not be taken by surprise since it will defeat the right of fair trial guaranteed under Article 21 of the Constitution of India.

8. Learned Additional Public Prosecutor, on instructions, submitted that PW-1 has been recalled pursuant to the application filed by the petitioner u/s.311 Cr.P.C. and the case is posted for cross-examination of PW-1 on 07.08.2023. In view of the same, steps can be taken by the prosecution to file a fresh application u/s.311 Cr.P.C. for marking four documents.



Criminal Original Petition No.16814 of 2023

9. On such application, notice shall be issued to the petitioner/accused and his objection shall be called for and thereafter, the Court below can take a decision. The portion of the deposition that was recorded on 02.08.2022 touching upon Exs.P3 to P6 shall stand eschewed. If ultimately the Court below is satisfied that the four new documents must be marked through PW-1 after considering the application filed by the prosecution, PW-1 shall be first examined in chief by the prosecution in that regard. Thereafter, the petitioner can be permitted to cross-examine PW-1. Till this process is completed, the cross-examination of PW-1 on the side of the petitioner shall be deferred.

This Criminal Original Petition is disposed of in the above terms and there shall be a direction to the Court below to complete the proceedings in C.C.No.4863 of 2017 within a period of four (4) months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

28.07.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
gm

Note: Issue order copy on 03.08.2023



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N. ANAND VENKATESH., J

gm

To

- 1.The XVIII Metropolitan Magistrate,
Saidapet.
- 2.The Inspector of Police,
W22-All Women Police Station,
Mylapore, Chennai - 4.
- 3.The Public Prosecutor,
High Court, Madras.

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