



WEB COPY

Crl.O.P.No.21641 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.09.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.21641 of 2023

1. Shri K.S.S.V.P Murthy Raju

2.Smt.Pushpavalli

... Petitioners

-VS-

State Rep by its
Inspector of Police,
Central Bureau of Investigation,
Anti Corruption Wing,
Sasthri Bhavan, Chennai -6.

...Respondent

PRAYER : Criminal Original Petition has been filed under section 482 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.4566 of 2023 dated 13.07.2023 in C.C.No.9 of 2010 on the file of the Learned XIII Additional Sessions/Special Judge for CBI cases, allow the petition in the said Crl.M.P.No.4566 of 2023 in accordance with the spirit of Section 294 Cr.P.C, allow the documents to be exhibited by duly assigning the numbers to them, allow the documents to be read in evidence directly.

For Petitioner

: Ms.V.Pushpa

For Respondent

: Mr.K.Srinivasan
Special Public Prosecutor (CBI)



WEB COPY

CrI.O.P.No.21641 of 2



ORDER

The accused herein who is tried for offence under Sections 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 and Section 109 of IPC for possessing assets disproportionate to his known sources of income had filed Application under Section 294 Cr.P.C to receive four documents without any formal proof.

2. Those four documents relates to the testimony of PW.7, S.B.Shankar and PW.29, C.Ponnlagan, Deputy Superintendent of Police in C.C. No.31 of 2009 which is against the petitioner herein for offence under Sections 120-B IPC r/w Section 7, 12 r/w 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 for alleged offence of receiving Rs.6,65,000/- as illegal gratification. The other two documents are copies of the trial Court judgment and the judgment of the High Court reversing the Judgment of the trial Court.

3. These four documents, which were sought to be received with out formal proof is opposed by the Public Prosecutor on the ground that these documents cannot be admitted without formal proof, since it has been verified by the concerned record keeper or certifying/comparing officials of the Court



concerned, even otherwise, the provision under Section 294 Cr.P.C cannot be invoked to bring on record the new documents which are part of judicial records. The trial Court after considering the objections allowed the application subject to the proof and relevancy of the said documents.

4. The petitioner/accused herein is aggrieved by the caveat in the trial Court while allowing the application. According to her, documents allowed to be received under Section 294 Cr.P.C. need no proof.

5. Learned counsel for the petitioner submitted that these four documents are certified copies issued by the Court, therefore there is need for any formal proof. Regarding the relevancy of the documents, the petitioner will satisfy the Court, if there is any doubt about the relevancy of the documents.

6. The Special Public Prosecutor appearing for the CBI submitted that PW.7, S.B.Shankar is a Deputy Superintendent of Police, ACB, Chennai who registered the case against the petitioner for demand and acceptance of bribe and he is the person who conducted search in the running train and recovered a sum of Rs.6,60,000/- from the possession of the petitioner for which the



petitioner stand trial in C.C. No.31 of 2009. P.W.29, C.Poonalagan, is the Inspector of Police who completed the investigation in that case. Ponnalagan who is the Inspector of CBI, is also the investigation officer in respect of the case against the petitioner under Section 7 and 13(1)(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988, which is the subject matter on C.C.No.31 of 2009.

7. The present case is entirely on a different charge and the evidence of those two witnesses as well as the findings of the trial Court and the appellate Court has no relevancy to the case in hand. Further, PW.7 S.B.Shankar is not a witness in the present case and PW.29 (C.Poonalagan) in the previous case has been examined as one of the witness in the present case. So any previous statement made by him ought to have been confronted when he was cross-examined. Instead the testimony of the witness in the other case is sought to be marked without formal proof under Section 294 Cr.P.C, which is not permissible under law.

8. Further, the judgements rendered in the another proceedings is always subject to Section 43 of the Evidence Act, 1872 and they are not relevant, even



otherwise the finding of the Criminal Court in a case is a matter of Court record and no bar for the Court to take judicial notice receiving it as document without proof does not arise in so far as judgments. The trial Court had permitted the petitioner herein to mark the document subject to proof and relevancy and there is no illegality in the said order provided the documents relied by the accused is proved in the manner known to law and he is constrained to prove how these documents are relevant to the facts of the present case.

9. This Court considered rival submissions made by the counsel Section 294 Cr.P.C is to enable the trial Court to proceed with the trial without strict compliance of the formality in respect of documents which are admitted by both the parties and formal proof is not required. In other words, examining the author of the document or the person with whom the possession of the documents is dispensed and admitted in evidence provided parties agree. It enable the Court to exercise its discrimination while admitting the document and no party has right to insist the Court to admit documents without formal proof.

10. Sub Section (3) of Section 294 of Cr.P.C, reads as follows:



WEB COPY

Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceedings under this Code without proof of the signature of the person to whom it purport to be signed.

The proviso to Sub Section 3 confers discretion to the Court if necessary to call for the party to prove the signature found in the document. Thus it is very clear that Section 294 Cr.P.C is an exception to general rule and it is a provision which enables the Court to admit documents without formal proof on certain conditions. These are the four documents sought to be received under Section 294 Cr.P.C are documents pertaining to Court records. The testimony of the witnesses in a different proceedings. They both are alive and one of them has already been mounted the witness and cross examined by the petitioner. Two other documents are the judgements of the Courts in a different proceedings, the trial Court while considering the application observed that these documents are taken subject to proof and relevancy.

11. Learned counsel appearing for the petitioner takes exception to the condition that once an application under Section 294 Cr.P.C is allowed, formal proof is not required, while so, the trial Court ought not to have observed that these documents and admitted subject to proof. This Court finds no force in the



said submission. Section 294 Cr.P.C is exception to general rule of evidence. In a Criminal trial unless the documents sought to be admitted without formal proof without examining the author of the document is permissible, this provision cannot be resorted for all and every documents. As far as records of the Court proceedings, Indian Evidence Act, Sections 41, 42 & 43 and Section 80 deals about the relevancy and presumption. These four documents cannot be formerly admitted without proof since the statements of a person in previous judicial proceedings can be tested only through the maker of the statement and cannot be admitted without formal proof.

12. The first two documents cannot be formally admitted since it is testimony of living person and other two documents are Court decisions. The previous statements if at all to be relied in the subsequent proceedings it should be done by introducing it through the maker of the statement by examining those witnesses. It is also relevant that if any certified copy of the testimony of a witness is produced, then under Section 80 of the Indian Evidence Act, the Court shall premise the documents is genuine, but not the content of the document. As far as the other two documents are concerned, they are judgements of the Court and there is no necessity to mark it as documents at all.



It is Court records and if it is relevant for any reference, it is always open to the trial Court to take note of it. Hence this Court finds no merit in the Criminal Original Petition hence dismissed.

20.09.2023

Internet : Yes/No
Index : Yes/No
rkp

To

1. The XIII Additional Sessions/Special Judge for CBI cases,
Chennai.
2. The Inspector of Police,
Central Bureau of Investigation,
Anti Corruption Wing,
Sasthri Bhavan, Chennai -6.



WEB COPY



Crl.O.P.No.21641 of 2023

Dr.G.JAYACHANDRAN, J.

rkp

Crl.O.P.No.21641 of 2023

20.09.2023