



Crl.R.C.(MD).No.1255 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2023

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THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.1255 of 2022
and Crl.M.P.(MD).No.15780 of 2022

Robert Victor

... Petitioner

Vs.

The State represented by
The Inspector of Police,
Anna Nagar Police Station,
Madurai.
(Crime No.1816 of 2020)

.. Respondent

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the entire records pertaining to the order passed by the I Additional Special Court for NDPS Act Cases, Madurai in Crl.M.P.No.1276 of 2022 in C.C.No.116 of 2021 dated 26.10.2022 and set aside the same.

For Petitioner : Mr.M.Pitchai Muthu

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

ORDER

This Criminal Revision Case has been preferred against the order passed by the trial Court in Crl.M.P.No.1276 of 2022 in C.C.No.116 of 2021.



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2.The brief facts in brief:

This Criminal Revision Petitioner is facing charges under Sections 8(c) r/w 20(b)(ii)(c) and 25 and 29(1) of NDPS Act before the Special Court. During the course of trial process, the account statement of this petitioner from Federal Bank was obtained by the respondent on the ground that during the course of investigation it was found that a sum of Rs. 10,000/- was credited in the petitioner's account in connection with the above said commission of crime. Even though the Bank statement was collected, it was not presented along with the final report due to over sight. So the prosecution sought the permission of the Court to produce the document by filing the above said petition.

3.It was resisted by the revision petitioner stating that the crime is of the year 2018 and the Account statement alleged to have been obtained during the course of trial. So that document cannot be permitted to be marked. No proper application was filed under Section 311 of Cr.P.C. There is a long delay in filing the petition. Moreover, the deponent is not the Inspector of Police attached to the Anna Nagar Police Station. On the date of investigation, he was working somewhere else.

4.The trial Court allowed the petition on the ground that the



revision petitioner has not denied the Account statement. As per the Bankers Book Evidence Act, it can be deemed to be a genuine document and is also found that a transaction really took place in the above said account. On that ground it was allowed.

5.A series of arguments have been advanced by the learned counsel for the revision petitioner on the ground that as mentioned above, the above said document was collected only during the course of trial. For collecting new evidence, no permission was obtained by the respondent under Section 173 (8) Cr.P.C.

6.The next ground is that the deponent, who filed the above said petition, become *functus officio* on the date of the petition, since already investigation was over and final report was filed before the Special Court. For that purpose, the petitioner would rely upon the Judgment of the Bombay High Court in the case of ***Bhagyashree Prashant Wasankar Vs. State of Maharashtra, through Police*** reported in ***2021 Latest Caselaw 9247 Bom.*** He would heavily rely upon the Judgment of the Bombay High Court in paragraphs 21 and 22 and would submit that a party to the trial process cannot be permitted to produce the document without following the procedure provided under Section 173(8) Cr.P.C.



7.No doubt, that the proper procedure was not followed by the respondent, while collecting the above said additional document, which clearly shows that it was not collected during the course of investigation, but, during the course of trial, as we find it from the date of issue as 30.06.2022. So, definitely, it was not collected at the time of investigation. Therefore, the respondent ought to have sought permission from the Court to collect the additional evidence. Hence, the course adopted by the respondent is not proper.

8.The petition was presented under Section 173(5) Cr.P.C. The learned counsel for the revision petitioner was asked to respond to the point that was decided by the Honourable Supreme Court in the case of ***Varsha Garg Vs. State of Madhya Pradesh and others*** reported in ***2022 SCC online SC 986***, wherein, the Honourable Supreme Court was of the view that Section 311 Cr.P.C., can be invoked by the trial Court for the purpose of finding out the truth. Para 51 of the Judgment is relevant for reconsideration.

“51.The Court while reiterating the principle enunciated in Mohanlal Shamji Soni (supra) stressed upon the wide



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ambit of Section 311 which allows the power to be exercised at any stage and held that:

*“44. The power of the court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e.: (i) giving a discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court is very wide, the very width requires a corresponding caution. In Mohanlal v. Union of India this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as, “any court”, “at any stage”, or “any enquiry or trial or other proceedings”, “any person” and “any such person” clearly spells out that the section has expressed in the widest- possible terms and do not limit the discretion of the court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. **The second part of the section does***



not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, “essential” to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.” (emphasis supplied)

9. In the light of the above said discussion by the Honourable Supreme Court, let us go back to the order that has been passed by the trial Court as well as the CD file. CD file shows that even at the time of investigation, it was found that a sum of Rs.10,000/- was deposited to the credit of the account number of this petitioner. Whether the above said amount was deposited by the co-accused in relation to the above said



offence is the matter for consideration by the trial Court. When the prosecution says that the account statement is available to show the same, the trial Court thought it fit to allow the same, of course with the liberty to the revision petitioner to make objection at the appropriate time, i.e., at the time of marking the document and filing of petition under Section 311 of Cr.P.C. As pointed out by the Honourable Supreme Court, it is nothing but a mistake on the part of the respondent herein in not collecting the document during the course of investigation. But, the prosecution cannot be precluded from producing the document and of course, since it was not collected during the course of investigation, the prosecution ought to have invoked Section 91 Cr.P.C. for summoning the document from the Federal Bank.

10. In view of the above said discussion, I am of the considered view that the procedure that has been adopted by the trial Court and as well as the prosecution in producing the document and entertaining the same is not correct. As I mentioned earlier, the respondent can invoke Section 91 Cr.P.C. to summon the document, So that the procedural mistake that has been committed by the respondent as well as the trial Court will be set at right. After summoning the document under Section 91 Cr.P.C., the respondent may be permitted to mark the document, of course, by supplying



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the copy of the same to the accused, So that he can effectively cross examine the witness.

11.With the above liberty and directions this Criminal Revision Petition stands allowed. The order passed by the learned I Additional District and Sessions Judge, I Additional Special Court for NDPS Act Cases, Madurai, in Crl.M.P.No.1276 of 2022 in C.C.No.116 of 2021, dated 26.10.2022, is hereby set aside without prejudice to the above said procedural to be adopted. Consequently, connected miscellaneous petition is closed.

01.02.2023

Index : Yes / No
Internet : Yes / No
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To

1. Additional District and Sessions Judge, I Additional Special Court for NDPS Act Cases, Madurai.
2. The Inspector of Police, Anna Nagar Police Station, Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVA,J.

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