



Crl.R.C.(MD)No.1280 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2023

CORAM:

THE HON'BLE MR.JUSTICE G.ILANGO VAN

Crl.R.C.(MD)No.1280 of 2022

Baburaj @ Dinkal

... Revision Petitioner /Appellant / A2
Vs

The Inspector of Police,
Keerathurai Police Station,
Madurai City.
(Crime No.91 of 2021).

... Respondent / Respondent /
Complainant

Prayer: This Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C., to admit the revision petition and set aside the order in Cr.M.P.No.1895 of 2022 in C.C.No.324 of 2021 dated 29.11.2022 on the file of the learned I Additional District Court cum Special Court for NDPS and E.C.Cases, Madurai, by alloweing this revision petition.

For Petitioner : Mr. J.Vijayaraja

For Respondent : Mr. B.Nambiselvan
Additional Public Prosecutor

ORDER

The revision has been preferred against the order passed by the trial Court in Crl.M.P.No.1895 of 2022 in C.C.No.324 of 2021 dated 29.11.2022.



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2. Fact in brief:

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The revision petitioner is the second accused in C.C.No.324 of 2021 on the file of the I Additional District Court cum Special Court for NDPS and EC Cases, Madurai and he is facing charges under Section 8(c) r/w 20(b) (ii)(C) and 29 (1) of NDPS Act before the trial Court. During the course of the trial, the prosecution has filed the petition under Section 173(5) of Cr.P.C., seeking order of the Court to produce the additional document. The above said petition was allowed on 29.11.2022 and the prosecution was permitted to produce the report which was prepared under Section 57 of NDPS Act. The above said petition was filed by the Inspector of Police, who is the Investigation Officer in the above said matter. After that, on 15.12.2022, P.W.2 who is the Author of the document was present before the Court for the purpose of cross examination. The chief examination was undertaken on 08.11.2022. On 15.12.2022, again the additional chief examination was undertaken by the prosecution and the report permitted under Section 57 of NDPS Act, which was marked as Ex.P.7. Objection was raised by the accused stating that the delay has not been properly explained and it is a document prepared for the purpose of sustaining the prosecution. Subject to the above said objection, the document was marked and lengthy cross examination was also made by the revision petitioner. After that, this revision has been preferred challenging the above said



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order.

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3. When the revision was moved by pointing out the above said development, the Court asked the revision petitioner as to how the revision is maintainable in view of the development that took place on 15.12.2022, on that ground, the matter was heard. During the course of argument, the counsel for the revision petitioner would submit that no permission was granted by the trial Court to recall P.W.2 for the purpose of marking the document, what was allowed on 29.11.2022 is only the application filed by the prosecution seeking permission to file the additional document. Without proper application, the trial Court has permitted the prosecution to recall P.W.2 for the purpose of further chief examination and marked the document. So, according to him, procedure adopted by the trial Court is not only irregular but illegal also. It is also submitted that the material witnesses have been dispensed by the prosecution even without informing the Court about the reason. Within short time from the date of the order, the above said document has been marked. According to the revision petitioner, it is highly illegal.

4. Per contra the learned Additional Public Prosecutor would submit that in view of the above said development and lengthy cross examination, the



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matter has become infructuous now.

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5. No doubt that the trial Court has committed a mistake in recalling of P.W.2 without proper petition under Section 311 of Cr.P.C. but the Court wanted to exercise the power under Section 311 Cr.P.C., which cannot be challenged on technical ground, since he made the lengthy cross on this document. Full opportunity has been given to the revision petitioner to cross examine with reference to the document.

6. The learned Additional Public Prosecutor would submit that since author of the documents is P.W.2, cannot be found to be illegal.

7. But however, without intimating the revision petitioner about the proposal to mark the document through P.W.2, the above said further chief examination has been undertaken. But as I mentioned earlier, sufficient opportunity has been given to the revision petitioner to cross examine the P.W.2 on this aspect. Therefore, absolutely no prejudice has been made.

8. With regard to the delay and other aspects, the petitioner got every right to cross examine the Investigation Officer, who has been examined in



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chief now. Whether the above said document is prepared for the purpose of sustaining the prosecution is the matter for consideration by the trial Court.

Even though, it has been submitted by the revision petitioner to the effect that to cause prejudice, the above said document is prepared by the prosecution belatedly and produced cannot be taken into account at this stage. But what type of prejudice caused to him because of delay can also be canvassed at the time of argument in the final hearing. Moreover treating the petition filed under Section 173(5) as one under 311 of Cr.P.C. can not be considered to be an illegal one. So, I find no reason to interfere in the order that was passed by the trial Court.

9. In the result, the Criminal Revision Case is dismissed.

04.01.2023

NCC : Yes/No

Index : Yes/No

Internet: yes/No

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Note : Issue order copy on 09.01.2023

To

1. The Inspector of Police,
Keerathurai Police Station,
Madurai City.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVA,J.

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