



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.2292 of 2024

Vilash Jalinder Pakhare

Petitioner

vs.

The State Rep. by
The Inspector of Police,
C-2, Elephant Gate Police Station,
Chennai.
(Crime No.916 of 2020)

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the deposition of PW-59 and set aside the order of overruled the objection of defense dated 12.01.2024 and to eschew the entire evidence of PW-59 as the same is recorded against the provision of section 159 Indian Evidence Act in S.C.No.315 of 2021 on the file of the Learned I Additional Sessions Judge, Chennai.

For Petitioner : Mr.G.Pugazhenth for
Mr.A.R.Annadurai

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor



WEB COPY

ORDER

This criminal original petition has been filed to call for the records pertaining to the deposition of PW-59 and set aside the order of over ruling the objection of defense dated 12.01.2024 and to eschew the entire evidence of PW-59 as the same is recorded against the mandate of section 159 Indian Evidence Act in S.C.No.315 of 2021 on the file of the Learned I Additional Sessions Judge, Chennai.

2. When the matter came up for hearing on 06.02.2024, this Court passed the following order:

Heard the learned counsel appearing on either side.

2. The main contention that was raised by the learned counsel for the petitioner is that under Section 159 of the Indian Evidence Act, the witness can only refresh his memory by referring to any writing made by himself at the time of transaction concerned about which he is questioned or so soon afterwards. According to the learned counsel for the petitioner, it is always left open to PW59 to look into the Case Diary and give his answers. However, PW59 cannot be given a prepared note by the Public Prosecutor and PW59 cannot be allowed to go through that notes and give his answers. The learned counsel submitted that Section



159 of the Indian Evidence Act does not enable a witness to prepare a written note and read it in the Court.

3.The learned Ist Additional Sessions Judge, Chennai is directed to submit a report before this Court. The should report specifically state as to whether PW59 was referring to a prepared note and giving his answers when he was examined in chief on the side of the prosecution or he was referring to the Case Diary and giving his answers. Since this had happened before the Court, no orders can be passed before without getting the report.

4.Post this case under the same caption on 13.02.2024.

3.Pursuant to the earlier order passed by this Court on 06.02.2024, a report has been received from the learned I Additional Sessions Judge. For proper appreciation, the entire report is extracted hereunder:

1.I humbly submit that S.C.No.315 of 2021 relates to a Triple Murder Case. All the three victims were shot dead in their own apartment at Sowcarpet on 11.11.2020. Though Mrs.P.Rani, Inspector of Police, C-2 Elephant Gate Police Station has registered the case, Mr. Balakrishnanaprabhu, Assistant Commissioner of Police (PW-59), Flower Bazaar Range was appointed as Investigating Officer of the case. Three Inspectors of Police namely Mr.Devaraj, Mr.Sathyan and Mr.Jawahar were appointed to assist PW-59 in the investigation of the case.



WEB COPY

2. Upon directions, all the three Inspectors of Police went on hot pursuit of the accused persons. The accused persons were arrested in different states within the country. There were totally nine accused persons from different states i.e. Maharashtra, West Bengal and Rajasthan. The police party had to travel to these states for investigation, to make arrest and seizure of vehicles and guns. Thus there are statements of many numbers of witnesses and documents. The final report is filed in five volumes containing 2336 pages. Three Inspectors of Police have also assisted in the investigation and prepared several records. Inspector Mr.Sathyan had also acted as Investigating Officer during the absence of PW-59, therefore he had also played a significant part in the investigation. These parts were compiled into a huge final report containing 2336 pages of documents. Apart from the above there are about 50 material objects described in various documents.

3. The case diary containing nearly 2500 pages were handled by many Inspectors, as such the indexing was not properly done making it difficult to go to the particular document for reference during the course of giving evidence. Therefore the Chief Investigating Officer referred to an index note and took out the relevant statement or document with the help of the index note and gave evidence based on the statements and documents recorded or prepared by him during the course of investigation. Of course PW-59 had an index note on the top of the case diary file while giving evidence before this court. However he did not read the index note



as his evidence. He just referred the index note for taking out the relevant documents or statements in the case diary and deposed evidence on the basis of the statements recorded by him and the documents prepared by him during the course of investigation. A reading of the deposition of PW-59 would clearly show that PW-59 could not have read anything from a prepared writing.

4. The evidence of PW-59 in paragraph 2 and 3 of his deposition is based on the complaint given by PW-1 and the exhibit in Ex. P1. The evidence in paragraph 4 is based on the Observation Mahazar and Rough Sketches in Ex P.13 to 15 and the list of witnesses with description in the final report. The evidence in Para 5 is with regard to his appointment as Chief Investigating Officer and the three inspectors as his assistants. The deposition in para 6, 7 and 8 were based on the statements of witnesses recorded during investigation, observation and seizure memorandums prepared during the course of investigation.

5. The deposition in para 8 is based on the seizure memorandum prepared by him during the course of investigation. At the time of recording the evidence in para 8 the investigating officer (PW-59) was referring to Ex.P.16 and told the court the list of four items seized by him as recorded in Ex P.16: A comparison of the contents of Ex.P.16 and paragraph 8 would clearly reveal that he had not read it from the index note but he has referred to his own writing in Ex P.16. At the time of recording the evidence in paragraph 8 of the deposition of PW-59 the learned counsel



objected that the witness was reading the contents from his index note. However at that time he was not reading the index note but he had referred the index note to find out the seizure memorandum in Ex. P.16 and read the items described in it when he seized the same. An investigating officer cannot be expected to memorize all the seized items with its descriptions and recite it before the court. It is not practically possible when there are nearly 50 material objects of different descriptions. Therefore the court had recorded its order rejecting the objections on the ground that the witness is entitled to refer to the documents prepared by him during investigation for the purpose of deposing evidence. The evidence in para 9, 10 and 11 are based on the inquest conducted by PW-59 on the body of three victims. His evidence is entirely based on the inquest reports in Ex.P.125, 126 and 127.

6. The evidence in para 12 regarding seizure of the blood stained bed sheets in PMO. 2 series is based on the seizure memorandum in Ex.P.17. The evidence in para 13 is based on the description given in the list of witnesses and their respective statements.

7. The evidence in para 14 to 18 of the deposition of PW-59 are completely based on the video footages in Ex.P.8 Pen drive and the evidence of concerned witnesses referred in paragraph 14 to 18. As the witness PW-59 had come to know about the identity of the accused persons through the examination of witness Hemanth, he had sent Mr.Jawahar (PW-49) to Pune. He had personal



knowledge as investigating officer and the records to say that he had sent PW-49 to Pune to arrest certain accused persons. The evidence in para 19 of the deposition of PW-59 is based on Ex. P.44 to 46 Accident Register which recorded the death of the three victims. The said documents contained the name of doctor who recorded it therefore he had spoken about it by referring to Ex. P.44, 45, and 46

8. The contents in para 20 of the evidence of PW-59 are based on the list of witnesses, their descriptions and the contents of Ex.P.8 Pen Drive. The contents of para 21 and 22 is based on the statements of concerned witnesses and relevant documents which reflect the cell phone numbers and the call detail records in Ex. P.109 series to Ex.P.114 series. The evidence in para 23 of the deposition of PW- 59 is based on the Post Mortem Examination Report in Ex.P.41, 48 and 50 and death reports in Ex.P.128, 129 and 130. The evidence in para 24 is based on the further statements of the witnesses named therein.

9. The evidence in para 25 is based on the records relating to the arrest of A1, A5 and A6 and the transit warrant available on material records. The evidence in para 26 is based on Ex.P.131 and 132 and the statements of PW.28 and PW.10 recorded by PW-59 during the course of investigation. The evidence in para 27 is based on the evidence of PW 15 and contents of Ex.P.128 to 130. The evidence in para 28 is based on the special report and the statement of Inspector Jawahar recorded by PW-59.



10. It is to be noted that for a few days PW-59 had gone on leave, handing over the investigation to PW 46 and the evidence relating to the same in para 29 is based on Ex.P.69 and 70 seizure memorandum, section alteration report and confession statements of A1, A5 and A6.

11. The evidence in para 30 of the deposition of PW-59 is based on the order of the VIII Metropolitan Magistrate, George Town granting police custody of the accused A2, A3 and A4 and the statements of the doctors who conducted autopsy.

12. The evidence in para 31 is based on the confession statements of the above named accused persons and the further statements of PW.2 Hemanth. The evidence in para 32 of the deposition is based on the statements of witnesses and Ex.P.8 along with its certificate under section 65B of Indian Evidence Act and form 91(Ex. P.133) used for collecting the items.

13. The evidence in para 33 is based on Ex.P.2 series and evidence in para 34 is based on CSR.No.15 of 2020 (Ex P.58). The evidence in para 35 is based on the order of police custody granted by the VIII Metropolitan Magistrate, George Town, Chennai. The evidence in para 36 is based on the confession statements of the concerned accused, the translator and the witnesses to the confession statements.



14. The evidence in para 37 and 38 is based on Ex. P31 and Ex.P.32. The evidence in para 39 of the deposition of PW-59 is based on the confession statement of A3 and the disclosures in Ex.P.32. The evidence in 40 is based on the confession statement of the three accused and the statements of translator and the witnesses to seizure memorandums.

15. Therefore none of the evidence is based on any written note, as claimed by the counsel for accused, instead the entire evidence is based on the investigation conducted by PW-59 and the records prepared by him and statements recorded by him during the course of investigation. It is true that he referred to an index note for the purpose of finding the relevant statement or the document in the Five Volumes of the final report and other records in the case diary, which is nearly 2500 pages of voluminous records.

16. Without the help of an index note, finding out the relevant document or statement readily would be a difficult, time consuming task for the investigating officer, particularly, when the records are voluminous. At the risk of repetition I submit that a cursory glance of the entire deposition of PW-59 would show and prove that the allegations of the petitioners/accused are not correct.



N. ANAND VENKATESH, J.

SSR

4. On a careful reading of the above report, it is seen that the procedure that was adopted by the Trial Court is very much within the scope of Section 159 of the Indian Evidence Act and this Court does not find any ground to interfere with the same.

5. This criminal original petition is disposed of in the above terms.

22.02.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
SSR

To

1. The Inspector of Police,
C-2, Elephant Gate Police Station,
Chennai.
2. The Public Prosecutor,
High Court, Madras.

Crl.O.P No.2292 of 2024