



Crl.R.C.No.2278 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.2278 of 2024 and
Crl.M.P.No.17750 of 2024

1.Karthick
2.Kalaiselvan
3.Sudhakar
4.Eswaran
5.Viji

... Petitioners

Vs.

The State Rep by
The Inspector of Police,
Pennagaram Police Station,
Dharmapuri District.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 438 & 442 of BNSS, to allow the above Criminal Revision Petition by setting aside the order dated 28.02.2024 made in Crl.M.P.No.6055 of 2023 in C.C.No.133 of 2018 on the file of the District Munsif cum Judicial Magistrate, Pennagaram.



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For Petitioner : Mr.V.Sakkarapani
For Respondent : Mr.S.Udaya Kumar,
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been filed challenging the order, dated 28.02.2024 in Cr.M.P.No.6055 of 2023 in C.C.No.133 of 2018 passed by the learned District Munsif-cum-Judicial Magistrate, Pennagaram in a petition under Section 242(3) of Cr.P.C filed by the prosecution seeking to mark a memory card to establish the case.

2.The petitioners are accused facing trial in C.C.No.133 of 2018 for the alleged offences under Sections 147, 148, 149, 447, 294(b), 323 and 324 of IPC. The prosecution has filed a petition under Section 242(3) of Cr.P.C seeking to mark a memory card containing certain videos to establish the case. The Trial Court allowed the said petition stating that the memory card can be marked subject to the production of the 65B Certificate.



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3.The learned counsel for the petitioners would submit that this memory card was not part of 173 documents; that six years after filing of the final report, it is sought to be introduced as evidence causing great prejudice to the petitioners; that the memory card is not supported by 65B Certificate as well; and that the copy of the memory card has also not been furnished to the petitioners so far and sought for setting aside the order of the learned Magistrate.

4.The learned Government Advocate (Crl. Side) *per contra* would submit that the said document namely the memory card was inadvertently not filed along with the final report; and that the order of the learned Magistrate permitting to produce memory card subject to the proof under 65B Certificate cannot be faulted and prayed for dismissal of the revision.

5.Admittedly, the memory card *i.e.*, sought to be now produced was not filed along with the final report. At the same time, this Court is of the view that any error in the management of the case or any inadvertent



mistake cannot be a reason for shutting down the evidence. Therefore, the learned Magistrate was right in allowing the petition for accepting the memory card. At the same time, the memory card cannot be accepted in the absence of 65B Certificate as rightly observed by the learned Magistrate.

6.The primary concern of the learned counsel for the petitioners is that the memory card which is now sought to be produced six years after the final report could have been tampered with and therefore, there is no means to verify the authenticity of the contents of memory card. It is needless to say that it is open to the petitioners to challenge the contents of the memory card in the manner known to law subject to, of course, the prosecution producing the 65B Certificate. It is reported that the copy of the memory card has not been furnished to the petitioner. In view of the above, the respondent Police is directed to handover a copy of the memory card that is sought to be marked to the petitioners before marking.



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8. With the above observations, this criminal revision case stands closed. The impugned order, dated 28.02.2024 in Cr.M.P.No.6055 of 2023 in C.C.No.133 of 2018 passed by the learned District Munsif cum Judicial Magistrate, Pennagaram is hereby confirmed. Consequently, connected criminal miscellaneous petition is closed.

13.12.2024

Index: Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation: Yes/No

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To

1. The District Munsif cum Judicial Magistrate,
Pennagaram.
2. The Inspector of Police,
Pennagaram Police Station,
Dharmapuri District.
3. The Public Prosecutor,
Madras High Court.



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SUNDER MOHAN, J.

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