



Crl.R.C(MD)No.1244 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.11.2023

Pronounced on : 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1244 of 2023

and

Crl.M.P(MD)No.15761 of 2023

Kaleeswaran @ Kalam Kali

... Petitioner/Accused No.1

Vs.

The State rep. by
The Inspector of Police,
Keeraithurai Police Station,
Madurai District.

... Respondent/Complainant

PRAYER : This Criminal Revision has been filed under Sections 397 & 401 of Criminal Procedure Code, to call for the records pertaining to the order passed in Cr.M.P.No.2044 of 2023 in C.C.No.324 of 2021, dated 16.10.2023 on the file of the I Additional Special Court for NDPS Act Cases, Madurai and set aside the same by allowing the revision case.

For Petitioner : Mr.R.John Jeyaseelan Jacop

For Respondent : Mr.S.Ravi
Additional Public Prosecutor



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ORDER

This Criminal Revision Case is filed against the order dated 16.10.2023 passed in Crl.M.P.No.2044 of 2023 in C.C.No.324 of 2021 on the file of the I Additional Special Court for NDPS Act Cases.

2.The brief facts of the case:

The revision petitioner is Accused No.1 in C.C.No.324 of 2021 on the file of the I Additional Special Court for NDPS Act Cases, Madurai. The petitioner and the co-accused were charged under Section 8(c)(d) r/w 20(b)(ii)(c) and 29(1) of NDPS Act for allegedly having possession of 30 kg of Ganja. The third accused was absconding long time and he surrendered in another case and on PT warrant he faced trial. After completion of prosecution witnesses, the accused were examined under Section 313 of Cr.P.C. Thereafter, the petitioner filed the petition in Crl.M.P.No.2044 of 2023 under Section 233 of Cr.P.C. to examine himself as a witness and also want to examine 7 others as witnesses. This petition was resisted by the prosecution. After considering both side arguments, the trial Court partly allowed the petition in respect of witnesses 1, 2, 3, 4 and 6 and dismissed the petition in respect of witnesses 5, 7 and 8 as mentioned in this petition. Being aggrieved by the order, the revision petitioner/Accused No.1 preferred this Criminal Revision Case.



3. Heard both side and perused the records in this Criminal Revision

Case.

4. The learned counsel for the revision petitioner has submitted that the revision petitioner is Accused No.1 in this case. In the final report, 12 witnesses were shown. L.W.1 was examined as P.W.1 on 28.02.2022 and further examination of witnesses was continued, but on 08.11.2022, LWs 2 to 9 were dispensed with and jumped over to LW10 – Sub Inspector of Police. The respondent police has not assigned any reason for non-examination of LWs 2 to 9. On 23.12.2022, LW11 and LW12 were examined as P.W.3 and P.W.4. LWs 2 to 9 have given statements under Section 161(3) of Cr.P.C. and their non-examination would affect the defence as they are having opportunity to cross examine. Further, the petitioner filed a petition under Section 91 of Cr.P.C. to produce the Call Detail Report (CDR), to disclose the tower location in which, Accused Nos.1, 2 and five others made conversations. But the said petition was dismissed as it was stated that the mobile service providers maintained data only for two years. The trial Court ought to have verify the veracity of the report through Nodal Officers of mobile service providers. The trial Court failed to give fair trial as guaranteed under Article 21 of the Constitution of India, as the petitioner is facing trial of serious charge under NDPS Act.

The petitioner has every right to prove his defence. The accused is in



custody till date and hence there is no question of delaying the proceedings.

This criminal revision is maintainable as the impugned order passed as interim stage and the trial was not concluded. The Hon'ble Supreme Court held that the accused has every right to putforth his defense to prove his innocence and also to substantiate his defense, opportunity should be given to the accused to lead evidence. The learned counsel for the petitioner has relied on catena of citations of various High Courts and Hon'ble Supreme Court as follows:-

- 1. 2021 (1) LW (Cri) 761 (B.Williams vs. State of Abiramam Police Station)**
- 2. 2001 Supreme Court Cases (Cri) 1254 (Bhaskar Industries Ltd., vs. Bhiwani Denim & Apparels Ltd., & Ors.)**
- 3. 2022 AIR (SC) 3707 (Varsha Garg vs. State of Madhya Pradesh and Ors.)**
- 4. 2006 (3) SCC 374 (Zahira Habibullah Sheikh & Ors. vs. State of Gujarat and Ors.)**
- 5. Appeal (crl.) 934 of 2007 of Supreme Court (Iddar & Ors. vs. Aabida & Anr.)**
- 6. AIR 1999 Mad 76 (S.Murugesan & 2 Ors. vs. Pethaperumal and 2 Ors.)**
- 7. AIR 1991 Supreme Court 1346 (Mohanlal Shamji Soni vs. Union of India)**



8. 1954 AIR 51 (Habeeb Mohammad vs. State of Hyderabad)

9. AIR 1978 SC 47 (Madhu Limaye vs. State of Maharashtra)

10. AIR 1980 SC 962 (V.C.Shukla vs. State through CBI)

11. 1999 (3) SCC 134 (Rajendhrakumar Sitharam Pandey & Ors. vs. Uttam and Anr.)

12. 2006(6) SCC 195 (K.K.Patel and Ors. vs. State of Gujarath)

5. The learned Additional Public Prosecutor for the respondent contended that the petitioner has filed a petition under Sections 91 and 311 of Cr.P.C. for the same purpose and hence this criminal revision under Section 397(2) is not maintainable. There are five accused in this case and each accused are in practise to file separate petition one after another and thereby, they are delaying the proceedings. Though the respondent objected before the trial Court for examination of LWs by the accused, the trial Court allowed the same in respect of witnesses 1, 2, 3, 4 and 6, further, the respondent did not file any revision. But, the petitioner filed this revision purposely to delay the proceedings challenging the dismissal of examination of LWs 5, 7 and 8, who are the Inspector of Police, Cyber Crime Police



Station, the Nodal Officers of respective mobile providers. When the case is pending for defense side after completion of 311 of Cr.P.C. the petitioner filed the petition before the trial Court. The learned Additional Public Prosecutor produced copies of E-Court Diary of the case and relied on citations as follows:-

**1. (2009) 5 Supreme Court Cases 153
(Sethuraman vs. Rajamanickam)**

**2. Order, dated 27.04.2023 by this Court passed
in Crl.O.P(MD)No.3180 of 2023 (Baburaj vs. The
Inspector of Police, Keerathurai Police Station,
Madurai)**

**3. 2012 SCC Online Mad. 3914 (S.Nagarajan &
Anr. Vs. The Deputy Commissioner of Police,
R.S.Puram Police Station, Coimbatore)**

**4. 2013 (1) MWN (Cr) 583 (DB) (S.Nagarajan
Vs. The Deputy Commissioner of Police, R.S.Puram
Police Station, Coimbatore & Anr.)**

**5. Order, dated 29.08.2023 passed by this Court
in Crl.O.P.No.15086 of 2023 (Baburaj @ Dinkal vs.
The Inspector of Police, Keerathurai, Madurai)**

6. On hearing both, it is clear that the petitioner is Accused No.1 in this case registered in Crime No.97 of 2021 by the respondent police. It is the case of the petitioner that the petitioner and Accused No.2 were not



arrested as stated by the prosecution, but they were taken into custody on 02.02.2021 by the special team and were falsely implicated in this case.

The prosecution alleged that the petitioner/Accused No.1 and Accused No.2 and 5 others made conversation over mobile phone for commission of the alleged offence and so the petitioner wants to examine LWs 2 to 9 and themselves. The learned Additional Public Prosecutor vehemently contended that already the petitioner filed the petition under Section 91 of Cr.P.C. to produce Call Detail Report of mobile number and the same was dismissed by the trial Court, against which, the petitioner has not preferred any appeal or revision. It is further contended that the revision petitioner has filed the petition for re-calling witnesses for the same purpose of call detail report and hence, this revision is not maintainable.

7. On perusal of case records and citations produced by both side, the accused has every right to prove his defense. However, the learned Additional Public Prosecutor submits that this Court has already issued direction for disposal of the case within the stipulated time and after that, the accused who are five in number used to file the petition after petition and revision after revision to delay the main case proceedings and produce a copy of the order passed in revision filed by other accused. On perusal of records, after completion of 313 of Cr.P.C. proceedings, the petitioner filed the petition before the trial Court to examine 8 witnesses including the



petitioner/Accused No.1. The trial Court allowed the petition for examination of petitioner and witnesses 2, 3, 4 and 6 whose 161 statements are available.

8. As far as the witnesses 5, 7 and 8, who are the Inspector of Police, Cyber Crime Police Station, the Nodal Officers of mobile service providers, the petition was dismissed. Already the petitioner filed a petition under Section 91 of Cr.P.C. regarding Call Detail Report and the same was dismissed, which was not challenged by way of revision. Again the petitioner filed this petition for examination of witnesses namely the Inspector of Police, Cyber Crime Police Station, the Nodal Officers of mobile service providers for the same purpose of Call Detail Report, which has no merit in the eye of law. The petitioner has a fair chance to prove his defense in the examination of permitted witnesses sought in this petition.

9. Admittedly, the trial Court has been directed to dispose the main case within the stipulated time. But after completion of 313 Cr.P.C. proceedings, the petitioner and other accused used to file petition after petition on pretext known to them. In the above facts and circumstances of the case, this Court feels that the petitioner and other accused are filing the petition after petition to protract the main case proceedings. Thus, this Court is not inclined to interfere with the impugned order of the trial Court.



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This criminal revision has no merits. In the above circumstances, this Court is not inclined to allow this criminal revision.

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10. In the result, this Criminal Revision Case is dismissed. The order, dated 16.10.2023 passed in Crl.M.P.No.2044 of 2023 in C.C.No.324 of 2021 on the file of the I Additional Special Court for NDPS Act Cases, Madurai is confirmed. Consequently, connected Miscellaneous Petition is closed.

28.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

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



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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