

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

CrI.RC(MD)No.497 of 2016

and

CRL MP(MD)No.5946 of 2016

Orders Reserved on 02.11.2016

1.Karuppasamy
2.Karuppaiah
3.Seetha
4.Sagunthala
5.Kottimuthal

: Petitioners / Respondents

Vs.

The State of Tamil Nadu,
Rep.by the Inspector of Police,
All Women Police Station,
Srivilliputhur

: Respondent / Petitioner

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for records and set aside the order passed in CrI.M.P.No.2218 of 2016 in C.C.No.88 of 2014, on the file of the learned Judicial Magistrate No.II, Srivilliputhur, dated 04.07.2014.

For Petitioners :Mr.P.M.Vishnu Varthanan

For Respondent :Mr.P.Kandasamy
Government Advocate(Crl. Side)

ORDER

This Revision has been filed praying to set aside the order passed in Crl.M.P.No.2218 of 2016 in C.C.No.88 of 2014, on the file of the learned Judicial Magistrate No.II, Srivilliputhur, dated 04.07.2014.

2. On the basis of the complaint given by the defacto complainant / P.W.1, an FIR in Crime No.36 of 2013 was registered against the Petitioners / A1 to A4, for the offences under Sections 498(A) and 323 of IPC., r/w.Section 4 of Dowry Prohibition Act. The first petitioner herein is the son of the 2 and 3 petitioners and brother of the 4th and 5th petitioners herein. The 4th and 5th Petitioners are daughters of 2nd and 3rd petitioners herein. Investigation was over and final report has been laid and is pending as C.C.No.88 of 2014, on the file of the learned Judicial Magistrate No.2, Srivilliputhur, for adjudication. This Court also in Crl.O.P. (MD)No.6175 of 2016 had directed the trial Court to complete the trial in C.C.No.88 of 2014, within a period of six months and based on that, the trial Court has accelerated the trial proceedings. P.Ws. 1 to 7 were examined and questioning the accused under Section

313 of Cr.P.C was also completed. Arguments were heard on 31.05.2016 from the accused side. The petition in Cr.M.P.No.2218 of 2016 has been filed on 15.06.2016, under Section 311 Cr.P.C., for receiving one compact disc, which is the important documents of P.W.1 in the evidence. An affidavit of one Karpagavalli / P.W.1 is also filed along with the said petition, which signed by one person on behalf of the Sub-Inspector of Police, All Women Police Station, Srivilliputhur. The said petition has not been signed by the concerned Prosecutor or the Inspector of Police of the respondent. However, the trial Court has allowed the petition in its order, dated 04.07.2016 permitting to mark the said C.D., as an exhibit in the evidence of P.W.1/ defacto complainant, after hearing both sides. The present Revision is filed by the petitioners / accused persons to call for the records and to set aside the order, dated 04.07.2014, passed in Crl.M.P.No.2218 of 2016 in C.C.No.88 of 2014, on the file of the learned Judicial Magistrate No.II, Srivilliputhur.

3. The learned counsel appearing for the Revision Petitioners would contend that entertaining the said petition filed on behalf of the respondent under Section 311 of Cr.P.C., by the learned Magistrate is not maintainable in law; that the proposed Compact Disc (CD), which is ordered to be received in evidence of P.W.1 is not having the mandatory certificate required under

Section 65(b) of the Indian Evidence Act in respect of electronic evidence, as held by the Apex Court. The above said so called petition was filed at the fag end of the case, after hearing the arguments of the accused and the petition is also highly belated one without any valid reason; that the defato complainant have not even mentioned in her complaint or evidence as well as in the final report filed by the investigating officer about the possession of the said Compact Disc and that such proceedings in receiving the alleged C.D., in the evidence on the petition, which is not even filed by the Investigation officer is unknown to criminal rules of practice and therefore, the impugned order is liable to be set aside.

4. The learned Government Advocate (crl.side) appearing for the respondent would reiterate the allegations found in the counter statement in the revision itself and both sides agreed to dispose this Revision based on available records, since the case is pending for arguments. He would further submit that the trial Court has empowered to admit the evidence at any stage of the trial proceedings for conducting a fair trial to find out the truth and mere laches and human error will not be an impediment on the powers conferred on the Court by relying the decision of the Hon'ble Apex Court in ***Rajendra Prasad Vs. Narcotic Cell*** reported in ***(1999 (6) SCC 110)***; that the petitioners are

attempting to dilute the proceedings so as to escape from the clutches of law just by highlighting the procedural slip on the part of the prosecution during the trial proceedings, which is unwarranted in law and against the settled principles of criminal law and no prejudice will be caused to the petitioner by merely accepting the C.D., relied on by the defacto complaint in the trial proceedings, as the petitioners are vested with right to cross-examine the same and to rebut it.

5. Perused the materials on record and heard and considered the rival submissions advanced by either side.

6. Admittedly, this Court has already directed the trial Court to complete the trial in C.C.No.88 of 2014, within a period of six months. It is also not denied that the petition relating to the impugned order was filed at the fag end of the arguments of the accused. On perusal of the petition filed before the trial Court on behalf of the respondent, this Court finds that the said petition does not contain the signature of the prosecutor, who conduct the case and even the signature of the respondent police and also the affidavit of the prosecuting agency / Inspector of Police. The petition is signed by some other person on behalf of Sub Inspector of Police of respondent Police. The affidavit of the defacto

complaint is annexed with the said petition. The contents of the conversation contained in the said Compact Disc are not filed or not stated in the petition. The mandatory Certificate required under Section 65(b)(4) of the Indian Evidence Act is also not filed for admissibility of the record i.e., in this case the alleged compact disc. In support of the above contention in receiving the electronic record in evidence, the learned counsel appearing for the petitioner relies on the Judgment of the Hon'ble Supreme Court in **Anvar P.V. Vs. P.K.Basheer and Others** reported in **(2015 (1) SCC (Crl.) 24)** in which it is held that "electronic record produced for the inspection of the Court is documentary evidence under Section 3 of the Evidence Act, 1872. Any documentary evidence by way of electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedures prescribed under Section 65-B of the Indian Evidence Act. The purpose of these provisions is to sanctify the secondary evidence in electronic form generated by a computer. The very admissibility of the electronic record which is called as "computer output", depends on the satisfaction of the four conditions enumerated under Section 65-B(4) of the Evidence Act."

7. Admissibility of the secondary evidence of electronic record depends upon the satisfaction of the conditions as enumerated under Section 65-B of the Evidence Act. On the other hand, if primary evidence of electronic record adduced that is the original record itself is produced in Court under Section 62, the same is admissible in evidence without compliance with the conditions in Section 65(b).

8. The prosecution in this case has not chosen to file any application to issue summons to any of its witness for production of such documents or other things, as per Section 242(2) of Cr.P.C., But in the case on hand, the electronic document received from the defacto complainant along with her affidavit is filed with the petition, which does not contain the signature of the learned Assistant Public Prosecutor, who conducted the case before that Court or not even the signature of the Inspector of Police of the respondent. Hence, such petition filed on behalf of the respondent is not legally maintainable.

9. The contents / conversation statements pertaining to the electronic record / CD are not stated in this petition or not filed along with the petition. Mere production of the C.D / electronic

evidence without any details contain in it and also the mandatory certificate required under Section 65-Bb(4) of the Indian Evidence Act, cannot be received or admitted in evidence. No reference is made in the evidence of witnesses examined in this case and also in the final report filed by the Investigating Officer / Inspector of Police of the respondent. The defacto complaint has been examined as P.W.1, who has also not spoken about the possession of the said C.D and also the conversation recorded in the said C.D. The delay in filing the petition at the end of the criminal case proceedings is not explained with proper and valid reasons. The alleged C.D., is also not seized during investigation of the case by the respondent Police.

10. Considering the above facts and circumstances of the case, this Court is inclined to set aside the impugned order dated 04.07.2014, allowing the Crl.M.P.No.2218 of 2016, passed by the learned Judicial Magistrate No.II, Srivilliputhur in pending C.C.No. 88 of 2014, on its file.

11. In the result, the Revision Petition stands allowed and the impugned order, dated 04.07.2016, passed in Crl.M.P.No.2218 of 2016 in C.C.No.88 of 2014, by the learned Judicial Magistrate No.II, Srivilliputhur, is set aside. Consequently, the connected

Miscellaneous Petition is closed. Further, the trial Court is directed to dispose of the case within three weeks from the date of receipt of a copy of this order and report the same to the Registry of this Court.

18.05.2017

Index :Yes/No
Internet :Yes/No
MPK

To

- 1.The Judicial Magistrate No.II,
Srivilliputhur,
- 2.The Inspector of Police,
All Women Police Station,
Srivilliputhur
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.

A.M.BASHEER AHAMED, J.

MPK

Pre-Delivery Order made in
Crl.RC(MD)No.497 of 2016

Dated:-

18.05.2017