

(2015) 02 MAD CK 0276

In the Madras High Court

Case No : Criminal O.P. (MD) No. 2816 of 2015

G. Kannan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311
Prevention of Corruption Act, 1988 — Section 17(2), 18

Citation : (2015) 02 MAD CK 0276

Hon'ble Judges : M. Sathyanarayanan, J.

Bench : Single Bench

Advocate : K. Muthumalai, for the Appellant; C. Ramesh, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M. Sathyanarayanan, J.—The petitioner is arrayed as Accused No. 1 in Special Case No. 50 of 2011 on the file of the Special Court for Trial of Prevention of Corruption Act cases, Madurai and aggrieved by the order, dated 04.02.2015, made in CrI.M.P. No. 1175 of 2014, in and by which, the trial Court has entertained and allowed the petition filed by the prosecution under Section 311 of Cr.P.C., has filed this Criminal Original Petition.

2. The facts of the case would disclose that the petitioner/A1 while working as Office Assistant in the Department of Employment and Training at various places including Dindigul and Madurai, between 31.12.1991 and 05.04.2002 has accumulated wealth disproportionate to the known sources of his income and the value of the disproportionate asset is worth about Rs. 22,16,364/-. The wife of the petitioner also prosecuted and she is arrayed as Accused No. 2. The trial of the case was over and posted for arguments and at that juncture, the prosecution has filed the above said Petition under Section 311 of Cr.P.C. stating among other things that the case of the prosecution was closed on 31.07.2013 and on a perusal of the case records, it came to light that the proceedings of the

Superintendent of Police, Southern Range, Vigilance and Anti-Corruption, Madurai, dated 26.03.2002 and another proceedings of the same official dated 02.12.2004 received under Section 17(2) and 18 of the Prevention of Corruption Act, 1988, to authorise P.Ws.37 and 38, to conduct investigation have not been marked as Exhibits, though the said documents were available in the case bundle. It is further stated that the said omission is purely an inadvertent one and therefore, prayed for marking those documents.

3. The respondent/accused No. 1 opposed the said application by filing counter stating among other things that the case has been posted for arguments and at that juncture, the prosecution came forward to file the said petition, which would enable them to fill up the lacuna and since the case has been posted for arguments, the petition cannot be allowed.

4. The trial Court has taken into consideration the submissions made by the respective counsel for the parties on either side and other facts and circumstances, found that the said documents were already available in the case bundle and hence, there cannot be any impediment permitting the prosecution to mark those two documents and petitioners/accused are also having ample opportunities to question the concerned witnesses through whom the said documents going to be marked. Citing the said reason, the trial Court allowed the petition vide the impugned order dated 04.02.2015 and aggrieved by the same, the petitioner/A1 has filed this revision.

5. The learned counsel for the petitioner would contend that the lower Court ought not to have permitted the prosecution to mark the two documents as Exhibits, as it would enable them to fill up the lacuna and the petitioner herein is also put to grave prejudice and would further contend that apart from those two documents, attempts have also been made to mark some other documents and the details of which have not been disclosed in the petition and prays for setting aside the order.

6. Per contra, the learned Additional Public Prosecutor would contend that admittedly, those two documents are available in the Case Diary and purely on account of an inadvertent mistake, those documents have been omitted and taking into consideration of the same, the trial Court has rightly ordered the same and in any event, the petitioner will have an opportunity to cross examine the concerned witnesses with regard to those documents marked as Exs.37 and 38 and prays for dismissal of the petition.

7. This Court has carefully considered the submissions made by the learned counsel for the petitioner and the learned Additional Public Prosecutor and also perused the typed set of documents.

8. The two documents authorizing P.Ws.28 and 29 to conduct investigation are available in the Case Diary and on account of inadvertence, those documents were omitted to be marked as Exhibits. No doubt, the prosecution has closed its case and the matter is posted for arguments and at that stage only, the

application under Section 311 Cr.P.C. came to be filed. The Hon''ble Supreme Court of India has considered the scope of Section 311 Cr.P.C. in the judgment reported in Rajendra Prasad Vs. The Narcotic Cell Through its Officer in Charge, Delhi, and another case in CA No. 1307 of 2014 [Ranjana Prakash Desai and others v. State of West Bengal and another] dated 03.07.2014 and laid down the proposition that recall of petition under Section 311 Cr.P.C. is to find out the truth and it could not cause prejudice to the accused and cannot permit the prosecution to fill up the lacuna and mistake or laches in conducting case and it cannot be understood to mean lacuna in the case of the prosecution.

9. As already stated above, those documents are available in the Case Diary on account of inadvertence, those documents should not be marked and the lower Court by allowing the petition has rightly permitted the prosecution to mark those documents and it is always open to the petitioner to cross-examine the concerned witnesses with regard to those documents and therefore, this Court is of the view that the petitioner herein has not been put to prejudice in any manner. This Court also finds no error or infirmity in the reason assigned by the trial Court in allowing the petition.

10. In the result, the Criminal Original Petition is dismissed and it is always open to the petitioner to cross-examine the concerned witnesses with regard to Exs.37 and 38.