
(2011) 03 MAD CK 0173

In the Madras High Court

Case No : Criminal R.C. No. 1946 of 2007 and M.P. No. 1 of 2007

S. Babu

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 91
Evidence Act, 1872 — Section 123, 124
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

Citation : (2011) 03 MAD CK 0173

Hon'ble Judges : R. Mala, J

Bench : Single Bench

Advocate : K. Govi Ganesan, for the Appellant; S. Rajakumar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R. Mala, J.—Crl.R.C. is filed against the order dated 29.10.2007 in Crl.M.P. No. 5450 of 2006 in C.C. No. 478 of 2005 on the file of the

Judicial Magistrate's Court No. 1, Poonamallee.

2. Heard both sides.

3. Before the trial Court, the Petitioner has come forward with Crl.M.P. No. 5450 of 2006 in C.C. No. 478 of 2005 u/s 91 Code of Criminal

Procedure to send for five documents mentioned therein, to prove his case. After considering the contentions of the learned Counsel on both sides,

the trial Court dismissed the said Crl.M.P, against which, the present Crl.R.C. has been filed by the revision Petitioner/accused.

4. Learned Counsel appearing for the revision Petitioner/accused submitted that one Venkatesan, who is none other than the Petitioner's brother-

in-law, preferred a complaint stating that the revision Petitioner/accused has given a false Community Certificate as if he belongs to a Schedule

Caste, but actually the revision Petitioner/accused belongs to a Backward Community, namely Cavera Naidu. On the basis of the complaint, the

investigating agency investigated the case and filed the charge sheet against the revision Petitioner/accused. To prove his innocence and to show

that he belongs to Adi Dravidar Community, the revision Petitioner/accused has come forward with the said petition u/s 91 Code of Criminal

Procedure The trial Court failed to consider his case in proper perspective and dismissed the petition.

5. Learned Government Advocate (Crl. Side) appearing for the Respondent-Police/complainant submitted that most of those documents which are

sought to be called for, relate to Venkatesan, who is none other than the Petitioner's brother-in-law, the complainant, which show that the said

Venkatesan obtained Community Certificate as Adi Dravidar (Scheduled Caste). After framing of charges and after examination of witnesses, the

revision Petitioner/accused has come forward with the said Crl.M.P. u/s 91 Code of Criminal Procedure before the trial Court to call for the

documents mentioned therein. He further submitted that the trial Court considered the above aspects in proper perspective and dismissed the

petition.

6. As per Section 91 Code of Criminal Procedure, it has to seen as to whether those documents are necessary for proving the innocence of the

revision Petitioner/accused, in respect of the offences alleged against him under Sections 467, 468, 471 and 420 IPC.

7. The documents filed before the trial Court relating to the revision Petitioner/accused show that upto the Petitioner's school education, his

community has been shown as Cavera Naidu, but subsequently, it was altered to Adi Dravidar and hence he filed the petition u/s 91 Code of

Criminal Procedure to show that the de-facto complainant also obtained Community Certificate as Adi Dravidar.

8. In this connection, it is worthwhile to incorporate Section 91 Code of Criminal Procedure as follows:

Section 91: Summons to produce document or other thing:

(1) Whenever any Court or any officer in charge of a police station considers that

the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this Section merely to produce a document or other thing shall be deemed to have complied with the requisition if

he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this Section shall be deemed-

(a) to affect Sections 123 and 124 of the Indian Evidence Act, 1872, or the Bankers, Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

9. Now, this Court has to decide as to whether the documents in question are necessary for proving the revision Petitioner's innocence. The

document sought to be called for, are as follows:

(a) Birth Certificate issued by the Health Department, Corporation of Chennai, S.I. No. 71401, Registration No. 15558, Date of Registration

25.12.1982, Name of the Father: G. Venkatesan, Name of the Mother Vijaya, Address shown: 64, Gangai Amman Koil Street, Vadapalani, Date of Birth of the concerned child: 24.12.1982.

(b) Community Certificate issued by the Tahsildar, Mambalam Guindy Taluk, Chennai-78, in favour of V. Nithyanandam, Son of Venkatesan,

Sl.No. 232835, Dated 19.6.1995.

(c) Annai Veilankanni Matriculation School, No. 21, Jahir Hussain Street, M.G.R. Nagar, Chennai-78, Transfer Certificate Dated 23.6.1997,

Sl.No. 000265, Name of Student: V. Nithyanandam, Son of Venkatesan.

(d) Transfer Certificate issued by the Government Higher Secondary School, Kodambakkam, Chennai.24, Sl.No. 252/98-99, Admission No.

5878.

(e) Transfer cum Conduct Certificate issued by SRM Institute of Hotel

Management, SRM Nagar, Kattankulathur, Kancheepuram District, Tamil Nadu, Sl.No. 120, Dated July 2003, Name of the Student V. Nithyanandam.

10. All the above documents relate to the de-facto complainant's son's Birth Certificate, Community Certificate, School Certificate, Transfer

Certificate, Conduct Certificate, etc., of Nithyanandam, S/o Venkatesan. But those documents are not necessary or relevant to prove that the revision Petitioner/accused innocent.

11. In such circumstances, I am of the view that the revision Petitioner/accused has not proved that those documents are necessary for proving his innocence.

12. At the time of arguments, learned Counsel for the revision Petitioner/accused submitted that since the de-facto complainant Venkatesan is the

Petitioner's brother-in-law-cum-maternal uncle and as both belong to the same community and to show that the said Venkatesan also obtained the

Community Certificate to his son as Adi Dravidar, the revision Petitioner/accused wanted those documents to prove his case. But on a perusal of

those documents, it is seen that they are not relevant to the case. The said argument of the learned Counsel for the revision Petitioner/accused does

not merit acceptance, because, in criminal jurisprudence, once the charge is framed against an accused, the prosecution ought to prove the guilt of the accused.

13. If the revision Petitioner/accused wanted some documents to prove his innocence, those documents will be called for/send for/summoned by

the Court itself, suo-motu, to prove the community of the de-facto complainant. The petition filed before the trial Court was only to protract the

proceedings, that too after examination of the witnesses, and hence, I do not find any merit in this petition.

14. The trial Court considered the above aspect in the last paragraph of the impugned order and came to the correct conclusion. I do not find any

infirmary or illegality in the impugned order passed by the trial Court. The impugned order is liable to be confirmed.

15. For the reasons stated above:

(a) The Crl.R.C. is dismissed.

(b) The impugned order is confirmed.

- (c) The trial Court shall dispose of the main case as expeditiously as possible.
- (d) The Miscellaneous Petition is closed.