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Court : Chennai

Decided On : Apr-05-2016

Judge : The Honourable Dr. Justice P. Devadass

Appeal No. : Crl.O.P. No. 28572 of 2015

Appellant : Srinivasan

Respondent : State: The Deputy Superintendent of Police, Vigilance and Anti Corruption, Chennai

Judgement :

(Prayer:-Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records in Crl.M.P.No.1060 of 2014, set aside the portion of the Order dated 20.10.2015 passed by the Trial Court permitting the prosecution to adduce oral evidence with respect to the listed document No.2 of the surprise check proceedings dated 05.08.2009.)

A4 has filed this Criminal Original Petition with regard to a part of the impugned Order passed in Crl.M.P.No.1060 of 2014 in C.C.No.15 of 2011 by the learned Special Judge under P.C. Act.

2. A1 was Medical Director, E.S.I. Corporation. She is a public servant. Her public duty involved placing of orders for the purchase of drugs with drug distributors. A4,

a private person has been included as abettor to the commission of offence by A1.

3. Final Report filed. Charges were framed. Trial started. P.W.1 deposed as to his sanctioning of the prosecution against A1. P.W.2 Natarajan, DSP, spoken about his having conducted surprise check with the Inspection Cell Officials prior to the registration of the case. Through him, prosecution sought to mark Doc. No.2, namely, Surprise Check proceedings. Objecting to this, A4 filed CrI.O.P.No.1060 of 2014.

4. The Trial Court, passed the impugned Order not permitting the said document to be marked in evidence, since it is hit under section 25 of the Indian Evidence Act. To this part of the Order, the petitioner has no grievance. His grievance is with regard to the next part of the Order.

5. While not permitting the said document to be marked, the learned Special Judge, concluded that P.W.2 can depose about the happenings within his knowledge evidently relating to his recording of surprise check proceedings on the premises that it is not hit under any of the provisions of law.

6. According to the learned counsel for the petitioner, though the bar under section 25 of the Indian Evidence Act and under section 162 Cr.P.C. will clearly apply to evidence thereon sought to be adduced through P.W.2, thus, the Trial Court has fell into error.

7. On the other hand, the learned Additional Public Prosecutor would contend that the Order of the Trial Court is perfectly in Order. The witness who recovered some material objects can depose and it is not hit by the provisions of law.

8. I have anxiously considered the rival submissions, perused the impugned Order and also the materials on record. 9. The bar under section 25 of the Evidence Act is to prohibit confession made to police. Confession made to police is prohibited except to the extent provided in section 27 of the Evidence Act. In this respect, bar under section 25 of the Evidence Act or statement under section 161 r.P.C., namely, oral statement, also falls on similar line. When notes of the Surprise Check has been considered inadmissible under section 25 of the Evidence Act,

the bar equally applies to oral evidence pertaining thereto, whether it is within the knowledge of the Police Officer or not, is entirely a different matter. On legal principle, it is impermissible.

10. When the Trial Court recorded a finding that the surprise check notes in entirety, is not legally permissible because, it is hit under section 25 of the Indian Evidence Act, the same yardstick will also apply to oral evidence with regard to the said Surprise Check Proceedings will extend to materials collected.

11. In view of the foregoing, Ordered as under :

(i) This Criminal Original Petition is allowed.

(ii) The direction of the learned Special Judge under P.C. Act permitting P.W.2 to depose orally with reference to the Surprise Check Proceedings is set aside.

(iii) The Trial Court is directed to proceed with the Trial of the case in accordance with law expeditiously giving reasonable opportunity to both sides.

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