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Suresh Kumar, vs the State of Kerala,

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Court : Kerala Orders

Decided On : Jan-17-2023

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Crl.MC/5246/2020

Appellant : Suresh Kumar,

Respondent : The State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH TUESDAY, THE 17TH DAY OF JANUARY 2023 / 27TH POUSHA, 1944 CRL.MC NO. 5246 OF 2020 (AGAINST THE ORDER DATED 3/1/2020 IN CMP NO.4849/2019 IN CC NO.1293/2016 ON THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT (TEMPORARY), SASTHAMCOTTA PETITIONER/ RESPONDENT/ ACCUSED NO.1: SURESH KUMAR, AGED 45 YEARS MUDIGIL PADINJATTETHIL, AYIKKUNNAM, SOORANAD P.O., KUNNATHUR TALUK, KOLLAM DISTRICT BY ADV BABU S. NAIR RESPONDENTS/ STATE & PW2: 1 THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,KOCHI,PIN-

682 031 2 ASHA KUMARI, W/O. SUNIL KUMAR, MUDIYIL THQZHATHU VEEDU, AYIKUNNAM, SOORANAD SOUTH, KOLLAM DISTRICT,PIN-690 522 BY ADVS. SRI.V.JOHN MANI Sh RI.S.JAYANT SHRI.VARGHESE SABU SHRI.SETHULAKSHMI K.K. SRI .P.G.MANU SR.P.P THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17.01.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ..2..

ORDER

Dated this the 17th day of January, 2023 Annexures C and F orders passed by the Judicial First Class Magistrate Court (Temporary), Sasthamkotta (for short, 'the court below') are under challenge in this Crl.M.C.

2. The petitioner is the accused in C.C.No. 1293/

2016. He faces trial for the offences punishable under Sections 452, 294(b), 323, 324, 325, 427 r/w 34 of the IPC.

3. CW1 is the defacto complainant. He was

examined as PW1. CW2 is the wife of CW1 and one of the injured. She was examined as PW2. After their examinations, PW2 produced a CD allegedly containing a video footage of the incident involved in the case. She filed Annexure A petition to receive the said document into evidence. Thereafter, the prosecutor filed Annexure D petition to re-open the evidence and to examine PW1 to prove the CD produced by PW2. The court below as per Annexures C and F orders allowed both the petitions. Those two orders are challenged in this Crl.M.C. ..3..

4. I have heard Sri.Babu S. Nair, the learned Counsel for the petitioner and Sri.P.G.Manu, the learned Senior Public Prosecutor.

5. According to the victim, her son copied the

alleged incident on the mobile phone of PW1 and later on it was transmitted to a CD. It is alleged that the investigating agency during the investigation did not seize

the CD. The learned counsel for the petitioner submitted that the document was produced after a lapse of 9 years and that the reception of the document is not necessary for the just decision of the case. It is true that there is an undue delay. But the definite case of the victim is that the contents in the CD would prove that the prosecution allegation is true. Even if the investigating agency did not produce a document along with the final report, the court has every right to accept a document produced by the victim at a later part of time, if it appears to be necessary for the just decision of the case. The question whether the CD is admissible and its contents could be believed can be decided at the time of ..4.. evidence. I find no illegality or impropriety in the impugned orders.

6. The learned counsel for the petitioner, Sri.Babu S.

Nair submitted that, as the case is of the year 2016, there may be a direction to the court below to complete the trial and dispose of the case at the earliest. Hence, this Crl.M.C. is dismissed with a direction to the court below to complete the trial and dispose of the case as expeditiously as possible, at any rate, within a period of four months, from the date of receipt of a copy of this order. Sd/- DR. KAUSER EDAPPAGATH JUDGE APA ..5.. APPENDIX OF CRL.MC 5246/2020 PETITIONER'S ANNEXURES ANNEXURE-A CERTIFIED COPY OF THE APPLICATION FILED BY THE 2ND RESPONDENT HEREIN BEFORE THE J.F.C.M. SASTHAMKOTTA AS C.M.P.NO.2292/2019 ANNEXURE-B CERTIFIED COPY OF THE OBJECTIONS FILED BY THE PETITIONER IN C.M.P. NO.2292/2019 ANNEXURE-C CERTIFIED COPY OF THE ORDER DATED 17.9.2019 OF THE J.F.C.M., SASTHAMCOTTA IN C.M.P. NO. ANNEXURE-D CERTIFIED COPY OF THE APPLICATION SUBMITTED BY THE APP AS C.M.P.NO.4849/2019 IN CC NO. ANNEXURE-E CERTIFIED COPY OF THE OBJECTION FILED BY THE PETITIONER IN C.M.P.NO.4849/2019 DATED 24.12.2019 ANNEXURE-F CERTIFIED COPY OF THE ORDER OF THE J.F.C.M. SASTHAMCOTTA DATED 3.1.2020 IN C.M.P.NO.

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