

S.P.Sundarakesari Vs. the State

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Court : Chennai

Decided On : Jan-10-2012

Judge : P.R.Shivakumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 207, 161(3), 164, 173

Appeal No. : CRL.R.C(MD)No.9 of 2012

Appellant : S.P.Sundarakesari

Respondent : The State

Advocate for Def. : Mrs.S.Prabha, Adv.

Advocate for Pet/Ap. : M/s.M.Saravanan, Adv.

Judgement :

The sole accused in C.C.No.360 of 2009, on the file of the learned Judicial Magistrate, Karaikudi has come forward with the present Criminal Revision case, questioning the correctness and legality of the order of the said Judicial Magistrate, dated 27.05.2011 passed in Crl.M.P.No.8533 of 2010, filed by the Revision Petitioner in the above said Calendar Case.

2. In the said petition, the Revision Petitioner had contended that some of the documents relied on by the prosecution were produced only during the examination of P.W.1 in chief; that though copies of the said documents were

allegedly handed over to the Investigating Officer during investigation, copies of the said documents were not furnished to the accused and that the Revision Petitioner needed copies of those documents for doing effective cross-examination of the prosecution witnesses.

3. The learned Judicial Magistrate, Karaikudi, after hearing both sides, observed that as many as 32 documents had been marked as Ex.P1 to Ex.P32, out of which, furnishing of copies of some of the documents alone, namely, Ex.P5, P5,P11,P12,P17 and P18 was practicable and that it was not practicable to furnish copies of all other documents as they were voluminous. Accordingly, the learned Judicial Magistrate directed furnishing of copies of the above said documents alone to the Revision Petitioner herein(accused). So far as the other documents are concerned, the learned Judicial Magistrate, relying on second proviso to Section 207 of Criminal Procedure Code, has directed that the said documents which are voluminous could be inspected by the Revision Petitioner/accused personally or through his Pleader in the presence of the staff of the court. The said order is impugned in the present Criminal Revision case.

4. Mrs.S.Prabha, learned Government Advocate(Crl.Side) has taken notice on behalf of the respondent/Police. The submissions made on both sides were heard. The grounds of revision case, certified copy of the impugned order and other connected documents filed in a typed-set of papers were also perused.

5. At the outset, this Court wants to point out the scope of Section 207 of Cr.P.C., which requires furnishing of copies of the documents sought to be relied on by the prosecution. It gives a list of documents (which are of course are not exhaustive), copies of which are to be furnished to the accused. They are:-

(i) Police Report;

(ii)First Information Report recorded under Section 154;

(iii) the Statements recorded under Section 161(3) of Cr.P.C. of all the persons whom the prosecution proposes to examine as its witnesses;

(iv) the confessions and Statements, if any, recorded under Section 164 Cr.P.C.,

and

(v) other documents or relevant extracts thereof forwarded to the Magistrate with the police report under Section 5 of Section 173 of Cr.P.C.

6. There is no dispute regarding the fact that copies of the documents referred to in S.No.1 to 4 were furnished to the revision petitioner/accused. The grievance of the revision petitioner is that the documents copies of which were said to have been handed over to the Investigating Officer during the course of investigation were not furnished to the accused and those documents were produced only when P.W.1 was in the witness box. The contention of the Revision Petitioner is that for effective cross-examination of prosecution witnesses, furnishing of copies of those documents are necessary. Of course, it is true that copies of documents or relevant extracts thereof forwarded to the Magistrate with the police report under Section 173(5) of Cr.P.C are to be given to the accused. Such a right to have copies of the documents sought to be relied on by the prosecution is a valuable right of the accused to have a fair trial and fair chance of defending himself in the trial. But such a right and the corresponding duty cast on the Magistrate are not absolute without exception. Sub-Section (3) of Section 207 Cr.P.C. itself provides for the exclusion of portions of the statements of the witnesses proposed to be examined on the side of the prosecution, if such request for such exclusion is made by the police officer under Sub-Section (6) of Section 173 Cr.P.C. Though the Police Officer can make such a request, it is for the court to decide whether those portions are to be excluded from the copies to be furnished to the accused. Such a power is spelt out in the first proviso to Section 207 of Cr.P.C.

7. Similarly, in respect of 5th item, namely, "any other documents or relevant extract thereof forwarded to the Magistrate with the Police Report", power is vested with the Magistrate to direct that the accused will only be allowed to inspect such documents either personally or through his Pleader in the Court if such documents are voluminous making it cumbersome and impracticable to furnish copies of such voluminous documents. In the case on hand, out of 32 documents, the learned Judicial Magistrate has directed furnishing of copies of 6 documents. So far as the other documents are concerned, the learned Judicial Magistrate

opined that only permission to inspect those documents can be given since they are voluminous.

8. It is not in dispute that those documents are Account Books and other registers, which are no doubt voluminous. The learned counsel for the revision petitioner submits that there are over-writings at some parts of those documents and hence the revision petitioner needs copies of those documents to do effective cross-examination of the prosecution witnesses. Section 207 does not mandate that xerox copies or Photo copies of those documents are to be furnished. It simply refers to the right of the accused to get the copies of the documents. If typed copies are furnished, then it will not be possible for the accused or the court to find out whether there are any over-writings. If any discrepancy is found at any page of such registers, the accused can point out such discrepancy in the registers to have such parts marked. Instead of inspecting the documents using the permission granted by the Court and proceeding with the trial, the revision petitioner has chosen to approach this Court by way of the present revision case which could be termed only as an attempt of vexation and protraction of the case.

9. The learned Judicial Magistrate has not exercised any power which is not conferred upon him and the Magistrate has not failed to exercise any discretionary power vested with him. The exercise of discretion under second proviso to section 207 of Cr.P.C by the Magistrate cannot be termed improper, much less perverse. This Court does not find any defect or infirmity in the order passed by the learned Judicial Magistrate, Karaikudi. Therefore, this Court comes to the conclusion that the present Revision case does not even merit admission and the same deserves dismissal in limini at the stage of admission itself.

10. Accordingly, the Civil Revision Case is dismissed.

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