

E.K.Palanisamy Vs. State

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Court : Chennai

Decided On : Dec-16-2011

Judge : C.T.Selvam, J.

Acts : Indian Penal Code (IPC) - Sections 420, 419, 467, 468, 471, 468, 109;
Code of Criminal Procedure (CrPC) - Sections 311, 91

Appeal No. : Crl.R.C.Nos.1427 and 1428 of 2011 & M.P.Nos.1, 1, 2, 2, 3 & 3 of 2011

Appellant : E.K.Palanisamy

Respondent : State

Advocate for Def. : Mr.A.N.Thambidurai, Adv.

Advocate for Pet/Ap. : Mr.A.Ramesh, Adv.

Judgement :

This petitioner is the first accused in a case pending trial in C.C.No.592 of 2007 for the offences under Sections 420, 419, 467, 468, 471, and 468 r/w 109 IPC. In CM.P.No.3792 of 2011, the prosecution moved an application under Section 311 of Cr.P.C. for recall of P.W.1 in the case. In C.M.P.No.3793 of 2011, the prosecution sought a direction to the Joint Sub-Registrar-II, Erode, to produce the following documents, viz., a) Thumb Impression Register Volume No.201 Page No:50, b) Thumb Impression Register Volume No.201 Page No:84, c) Thumb

Impression Register Volume No:16 Page No.14 ; and to the Superintendent of Police (F.P.), Finger Print Bureau, Chennai-28, to produce the following documents, viz., a) All the Negatives of C.No.54/FPB/P./2006 in respect of Thumb Impressions marked as 'D1', 'D2' and 'A' and b) the covering letter sent by the Police along with the Negatives and the Thumb Impression Registers. Initially, the said applications were allowed on 11.08.2011. The same were challenged in CrI.R.C.Nos.1162 of 2011 and 1222 of 2011 respectively on the ground that the Court below had not recorded reasons. This Court, by orders dated 24.08.2011 and 06.09.2011, allowed the revisions and remanded the matter to the Court below directing it to proceed afresh and pass reasoned orders. Thereafter, the Court below has passed orders allowing the petitions under Section 311 and 91 Cr.P.C. Challenging the said orders, these revisions preferred.

2. Heard Mr.A.Ramesh, learned Senior Counsel for the petitioners and Mr.A.N.Thambidurai, learned Additional Public Prosecutor.

3. The case relates to alleged wrong-doings of the year 1999. The entire recording of evidence in the case stand concluded and the defence has also submitted its written arguments. At that stage, the petitions under Sections 91 and 311 were filed.

4. On consideration of the oral submissions and materials on record, this Court, without delving too much on the rival contentions, would straight away hold that the Court below was wrong in having allowed the petition under Section 311 Cr.P.C. inasmuch as it is not in dispute that P.W.1, who is sought to be recalled, is not a party to the documents or he has no personal knowledge whatsoever of the documents sought to be marked through him.

5. As regards Section 91 petition, the contention of the respondent / State was that even though the Finger Print Expert had compared the correct admitted thumb impressions with the disputed thumb impressions, the 'Will' dated 22.12.1986 registered as document No.251 of 1986 had wrongly been mentioned as document No.286/IV and 251/III and the Power of Attorney dated 28.01.1987 registered as document No.14/1987 had been wrongly mentioned as document No.196/1987 in the opinion of the expert rendered under Certificate

No.54/FPB/Police/2006 filed before the trial Court. It was informed that such mistake had inadvertently crept in owing to the mistake in the covering letter sent by the police to the Finger Print Bureau along with the relevant Thumb Impression Register. The respondent also contended that in the requisition letter filed by it before the Court in the year 2006 and subsequently while sending the disputed Thumb Impressions and the admitted Thumb Impression to the Finger Print Expert for comparison, correct number in respect of the 'Will' and the disputed Power of Attorney had been mentioned. It was contended that as P.W.8 has been examined based on the mistakenly mentioned document number of Power of Attorney dated 28.01.1987 registered as Document No.14 of 1987, the same has to be clarified by the prosecution in the interest of justice. Further, the negatives sent to the Finger Print Expert relating to the disputed Thumb Impressions and the admitted Thumb Impression were required to be produced before the Court in support of the prosecution case and to advance the cause of justice.

6. The finger print expert's opinion is dated 28.12.2006 and the expert has been examined as P.W.8 on 18.03.2010. The petition under Section 91 Cr.P.C. bears the date 25.07.2011. The proceedings of the case almost stand concluded and it is seen even written arguments have been submitted by the defence. Clearly, it is the evidence garnered by the defence in the course of examination of P.W.8 and regarding the dispute on the document submitted for scrutiny, that has prompted the prosecution to move the petition under Section 91. Though admittedly there is no bar to moving such an application at any stage of the case, the same cannot be used as a device to fill up the lacunae in the prosecution case, that too, at the fag end of the proceedings.

7. For the said reasons, we find that the orders of the Court below in allowing the petitions at such late stage with a view to fill up lacunae in the prosecution case are erroneous. These revisions shall stand allowed. The orders under challenge shall stand set aside. Consequently, M.P.Nos.3 & 3 of 2011 in these petitions shall stand dismissed and miscellaneous petitions in M.P.Nos.1, 1, 2 and 2 of 2011 are closed.

8. If it is an unfair advantage that the defence sought to gain through the cross-examination of P.W.8 and on the strength of wrong numbers of the documents having been mentioned, as informed in the petition under Section 91 itself, the covering letter reflects the correct position and it would always be open for the Court below to look into the records towards determining the propriety or otherwise of the contentions made.

9. Considering the fact that the alleged occurrence is of the year 1999, the case has been pending since 2007 and the same is at the stage of arguments, this Court would direct the trial court to dispose of the case within a period of three months from the date of receipt of a copy of this order.

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