

Inico Inbaraj and Another Vs State

Court: Madras High Court

Date of Decision: Aug. 14, 2013

Citation: (2014) 1 MLJ(Cri) 299

Hon'ble Judges: P. Devadass, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Devadass, J.

Accused in C.C. No. 47 of 2006, questions the order of the learned Judicial Magistrate No. I, Kovilpatti, in allowing CrI.

M.P. No. 4818 of 2011 filed u/s 311 of the Code of Criminal Procedure. According to the learned Counsel for the petitioner, quite at a belated

stage, nearly after four years, prosecution has filed the petition u/s 311 of the Code of Criminal Procedure in CrI. M.P. No. 4818 of 2011, to fill

up the lacuna. That has been allowed by the learned Judicial Magistrate No. I, Kovilpatti. It is flawed.

2. The learned Counsel for the petitioner would also submit that the copy of the document sought to be so marked, has also not been furnished to

the accused at the stage of Section 207 of the Code of Criminal Procedure.

3. However, the learned Government Advocate (Criminal Side) would submit that the said document has been produced in the Court long back

and by mistake, they were not supplied to the accused and now, they have been supplied.

4. I have considered the rival submissions.

5. Section 207 of the Code of Criminal Procedure is in fulfillment of observance of principles of natural justice. Materials which are proposed to be

relied on against the accused, have to be supplied to the accused. So that, he shall not be taken by surprise and put to prejudice. Accused should

be given opportunity to defend himself.

6. To err is human. To set it right is also a job of human agency. If somehow or other by oversight, some documents are missed to be supplied to

the accused during the stage of Section 207 of the Code of Criminal Procedure, it is not that those documents cannot be exhibited at all. It can be

done, provided opportunity has been given to the accused by giving him time to prepare on those additional documents. While doing so, any

attempt to fill up the lacunae, shall be scuttled. Any defence or any points, which will have an effect on the root of the case or it is in the nature of

destroying the defence already set up, is lacunae. But, mere supplying an omission or set right a mistake, which has occurred by oversight, will not

be a lacuna.

7. In this case, admittedly, the documents sought to be marked are not supplied to the accused u/s 207 of the Code of Criminal Procedure.

However, those documents were already filed by the Investigating Officer in the Court. They are available in the case bundle. But, by oversight,

those documents were not supplied to the accused. Only at a later stage, prosecution has woke up and found its folly and taken steps to set right

the mistake and filed a petition u/s 311 of the Code of Criminal Procedure and the copies of those documents also have been given to the accused.

They were given opportunity.

8. In the circumstances, allowing of the petition u/s 311 of the Code of Criminal Procedure cannot be flawed. Thus, we concur with the decision of

the learned Judicial Magistrate No. I, Kovilpatti, in allowing Crl. M.P. No. 4818 of 2011 filed u/s 311 of the Code of Criminal Procedure. In the

circumstances, the petition fails and it is dismissed.