



CRL MP(MD) No.4963 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Twelfth day of December Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN
CRL MP(MD) No.4963 of 2023
IN
CRL OP(MD) No.11657 of 2009

RAJAKALAISELVI

... PETITIONER/2ND RESPONDENT

Vs

1 M.DINAKARAN MANICKAM
2 A.KOIL PITCHAI
3 J.EDWARD BULLDOSS
4 M.K.DANIEL KOIL PITCHAI
5 BANUMATHI
6 JEBANESI

... RESPONDENTS NO.1 TO 6/PETITIONERS NO.1 TO 6

7 THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
TIRUNELVELI DISTRICT.
(CRIME NO.11/2008).

... 7TH RESPONDENT/1ST RESPONDENT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to recall the order passed in Crl.OP(MD)No.11657/2009 dated 23/01/2018.

Prayer in CRL OP(MD). 11657/ 2009 :

To call for the entire records in C.C.No.172/2009 on the file of the Learned Judicial Magistrate No.I, Tirunelveli, Tirunelveli District and quash the same.

Order : This Criminal Miscellaneous petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.N.DILIP KUMAR, Advocate for the petitioner and of MR.M.JERIN MATHEW, Advocate on behalf of the Respondent Nos.1, 5 and MR.M.MUTHUMANIKKAM, Government Advocate (Crl.Side) on behalf of the 7th Respondent, the court made the following order:-

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The petitioner filed this criminal miscellaneous petition, who is the defacto complainant/second respondent in the quash petition to recall the order passed by this Court in Crl.O.P.(MD).No.11657 of 2009, dated 23.01.2018.

2.The learned counsel for the petitioner submitted that he filed a change of vakalat on behalf of the defacto complainant/second respondent. The same was also entered in the records of the Registry. The counsel name was also shown in the cause list in the previous hearing ie., upto 23.01.2018. Inadvertently, in the cause list dated 23.01.2018, his name was not found place in the cause list. Hence , the matter was decided in his absence on merits and the petition was allowed. Therefore, he filed this petition under Section 482 of Cr.P.C., to recall the order passed by this Court in Crl.O.P.(MD).No.11657 of 2009, dated 23.01.2018, in his absence and requested to hear the matter afresh and decide the matter on merits. To substantiate his argument, he relied the following Judgments of the Honourable Supreme Court reported in (2011) 14 SCC 813, (2019) 5 SCC 715 and (2009)2 SCC 703.

3.The learned counsel for the respondent/accused submitted that this Court already decided this matter on merits. More particularly, in Paragraph Nos.9 and 12, this Court decided the matter on merits and also as if the parties are settled the dispute outside the Court. Hence, he seeks for dismissal of the Petition.

4.This Court considered the rival submissions made on either side and perused



the materials available on record and the precedents relied upon by them.

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5.The petitioner filed the change of vakalat on behalf of the defacto complainant/second respondent. His name was printed in the cause list upto the hearing on 23.01.2018. But his name was not printed on 23.01.2018. Therefore, this Court passed the order of the quashment of the case without hearing the defacto complainant. This Court perused 23.01.2018 cause list. In the said cause list, the name of the petitioner's counsel ie., Mr.N.DhilipKumar, was not printed. Hence, he was unable to appear before the Court at the time of the hearing. Therefore, he filed this petition to recall the said order dated 23.01.2018 and requested this Court to rehear the matter. The Hon'ble Supreme Court in the judgment reported in (2011) 14 SCC 813 held as follows:

6.In our opinion, Section 362 cannot be considered in a rigid and overtechnical manner to defeat the ends of justice. As Brahaspati has observed:

“Kevalam shastram ashritya na kartavyo vinirnayah yuktiheeney vichare tu dharmahaani prajayate”

which means:

“The court should not give its decision based only on the letter of the law.



For if the decision is wholly unreasonable, injustice will follow.”

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7. Apart from the above, we are of the opinion that the application filed by the respondent was an application for recall of the order dated 2-9-2003 and not for review. In *Asit Kumar Karv.State of W.B.*[(2009) 2 SCC 703 : (2009) 1 SCC (L&S) 541 : (2009) 1 SCC (Cri) 851 : (2009) 1 SCR 469] this Court made a distinction between recall and review which is as under: (SCC p. 705, paras 6-7)

“6. There is a distinction between ... a review petition and a recall petition. While in a review petition the Court considers on merits where there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party.

7. We are treating this petition under Article 32 as a recall petition because the order passed in the decision in *All Bengal Excise Licensees' Assn.v.Raghabendra Singh*[(2007) 11 SCC 374] cancelling certain licences was passed without giving an opportunity of hearing to the persons who had been granted licences.”

8. Hence, we see no error in the impugned order passed by the



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High Court. The appeal fails and is accordingly dismissed.

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9.The appeal is dismissed as having become infructuous.

6.The Hon'ble Supreme Court lay down the law that in the matter of the quashment of FIR and the final report, it is the duty of the Court to hear the defacto complainant and pass orders on merits. Hence, in the interest of justice, this Court is inclined to exercise jurisdiction under Section 482 of Cr.P.C., to recall the order of this Court passed in Crl.O.P.(MD).No.11657 of 2009, dated 23.01.2018 by allowing this petition.

7.Accordingly, this Criminal Miscellaneous Petition is allowed. Post the main petition on 15.12.2023.

sd/-
12/12/2023

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14/12/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

sbn

TO

1 THE JUDICIAL MAGISTRATE NO.I, TIRUNELVELI,
TIRUNELVELI DISTRICT

2 THE INSPECTOR OF POLICE, DISTRICT CRIME BRANCH,
TIRUNELVELI DISTRICT.



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3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-17676[I] dated 13/12/2023)
+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-17804[I] dated 14/12/2023)

ORDER

IN

CRL MP(MD) No.4963 of 2023

IN

CRL OP(MD) No.11657 of 2009

Date :12/12/2023

RS//SAR-(14.12.2023) 6P 6C

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