

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.102 of 2015

Senthil

...Petitioner/Accused

vs.

State represented by
Inspector of Police,
Mettur Police Station,
Salem District.

...Respondent/Complainant

PRAYER: Criminal Revision Case filed under Sections 397 read with 401 of Criminal Procedure Code to call for the records pertaining to the order dated 23.01.2015 in CrI.M.P. No.225 of 2015 in SC No.334 of 2013 on the file of the learned Principal Sessions Judge, Salem and direct to send Ex.P.6 and Ex.P.7 to the Expert's opinion in respect of alteration of letters in the School Attendance records filed by the revision petitioner.

For Petitioner : Mr.S.Manoharan

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

Case of the prosecution is that the petitioner is stated to have been involved in a sessions case in S.C.No.334 of 2013 on the file of the learned Principal Sessions Judge, Salem, for an offence under Section 302 of IPC. The petitioner, sole accused, is being tried for an offence under Section 302 of IPC, in SC.No.334 of 2013.

2. Pending trial, he has filed CrI.M.P.No.225 of 2015 on the file of the learned Principal Sessions Judge, Salem, under Section 45 of the Indian Evidence Act, to send documents, Ex.P.6 and Ex.P.7 to an expert opinion to find out as to whether letters found in the

Attendance Register of the Municipal Middle School, Trichengode, were altered or not. As per the averments, the deceased Murugan and Keerthivasan were studying in Municipal Middle School, Trichengode, in Standard 3 and 2, respectively, and that the Headmaster of the School has erased the letters "a" found in the Attendance Register.

3.It is the case of the petitioner that the above documents are required to be sent for Expert opinion. The Inspector of Police, Mettur Police Station, has objected to the prayer sought for. According to him, there was no alteration in Ex.P.6 and Ex.P.7, as alleged by the petitioner and PW10 had already stated about the said fact before the Court below. The respondent also contended that as per Section 73 of the Indian Evidence Act, if at all there is any alteration, the Court can find out the truth as to whether the same has been altered or not. After considering the material on record, the learned Principal Sessions Judge, Salem, has ordered as follows:

"4.The Ex.P6 and Ex.P7 were already marked in the Court without any objection on 16.10.2014 through PW10. After the examination of the prosecution witnesses, the matter was posted for defence evidence. On 09.01.2015, this petition is filed by the petitioner/accused. PW10 was recalled and cross examined on these aspect and one another Organizer of Noon Meal was also examined as DW1 on the side of the petitioner/accused and deposed about this fact. Therefore, the Court can very well analyze the evidence of PW10 and DW1 and the Court can look the documents Ex.P6 and Ex.P7 to decide whether these documents were forged by the official of the concerned School or not. Therefore, it is not necessary to send these documents for expert opinion.

5.Furthermore, as per Section 45 of Indian Evidence Act, as already pointed out by the Public Prosecutor, these documents cannot be sent to expert opinion. The Public Prosecutor also argued that the petitioner/accused wants to drag on the case. Therefore, though PW1 was examined on 11.08.2014, the case was not concluded and the same is pending for disposal. But the counsel for the petitioner/accused argued that it is very essential to send the documents for expert opinion.

6.It is also essential to mention some facts in this case. PW1 was examined on 11.08.2014 and 05.09.2014 and the case was adjourned to 17.09.2014 and he was cross examined on 15.10.2014 in part. Furthermore, on petition by the petitioner/accused the case was adjourned to

16.10.2014 and PW1 to PW3 were examined in full on that day. Thereafter, the witnesses were examined and on 02.12.2014, the petitioner/accused once again filed a petition to recall PW1 to PW3, PW5 to PW10, PW14 and PW16 for further cross examination and the same was allowed by this Court by its order dated 02.12.2014 in CMP.4294/2014.

7.The petitioner/accused also filed an application to recall PW1 and to examine the Organizer of Noon Meal of the School and the same was also allowed by this Court on 12.01.2015 as per the order in CMP.121/2015. It is not the case of the petitioner/accused that the deceased Murugan and Keerthivasan were attended the School up to 27.08.2012 and left the school only after the classes were over on that day. No such cross examination, regarding with the prosecution witnesses. Therefore, it is not at all necessary to send the documents for expert opinion. It is seen from contact of the petitioner/accused that he wants to drag on the proceedings, that is why, he is filed petition after petitions making hurdles to proceed with the case."

4.Though Mr.S.Manoharan, learned counsel for the petitioner, has assailed the correctness of the order dated 23.01.2015 made in CrI MP No.225 of 2015 in SC No.334 of 2013 on the file of the learned Principal Sessions Judge, Salem, on the ground inter alia in a case, involving an offence under Section 302 of IPC, the petitioner/accused ought to have been given all the opportunities, to prove his innocence, and thus allowed the prayer sought for, this Court is not inclined to accept the said contention, for the reason that PW10 has clearly spoken about the contents of the documents, Ex.P.6 and Ex.P.7. DW1, Noon Meal Scheme Organizer, examined on behalf of the accused, has also endorsed the version of PW10.

5.Reading of the order extracted shows that PW1 was examined on 11.08.2014. After the conclusion of examination of PW1 to PW3, PW5 to PW10, PW14 and PW16, the petitioner once again has filed a petition to recall the abovesaid witnesses and that the same is stated to have been allowed by the learned Principal Sessions Judge, Salem, vide order dated 02.12.2014 in CrI MP No.4294 of 2014. Again, another application has been filed to recall PW1 and also to examine the Organizer of Noon Meal of the School and that the same has been also allowed, vide order dated 12.01.2015 in CrI.MP.No.121 of 2015. Reading of the order further discloses that though sufficient opportunities have been given to the petitioner/accused, there was no cross examination and the Court below has observed that it is not the

case of the petitioner/accused that the deceased Murugan and Keerthivasan attended the School upto 27.08.2012 and left the School, only after the classes were over on that day. There was no cross examination also.

6.Having regard to the evidence of PW10 and DW1, the earlier orders in CrI MP No.4294 of 2014, dated 02.12.2014 and CrI MP No.121 of 2015 dated 12.01.2015, filed for recalling the witnesses, for cross examination and the attempt of the petitioners in filing applications one after another, even after the cross examination of the abovesaid witnesses and taking note of Section 73 of the Indian Evidence Act, which states that if at all there is any alteration, the Court itself can find out the truth as to whether the same was altered or not, vide order dated 23.01.2015 in CMP No.225 of 2015, the learned Principal Sessions Judge, Salem, has dismissed the petition, filed for a direction to send Ex.P.6 and Ex.P.7 for an Expert's opinion.

7.Contention of the learned counsel for the petitioner that the petitioner/accused have not been given all the opportunities, to prove their innocence, cannot be disputed. Perusal of the impugned order makes it abundantly clear that on more than one occasions, the accused have been given opportunity to cross examine the witnesses, as stated supra. Probably, when nothing is elicited, petitions have been filed CrI.MP.No.225 of 2015, for a prayer to send the documents Ex.P.6 and Ex.P.6 for an expert opinion.

Going through the material on record, this Court is of the view that there is no manifest illegality in the impugned order, warranting interference. The Criminal Revision Petition is dismissed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mps

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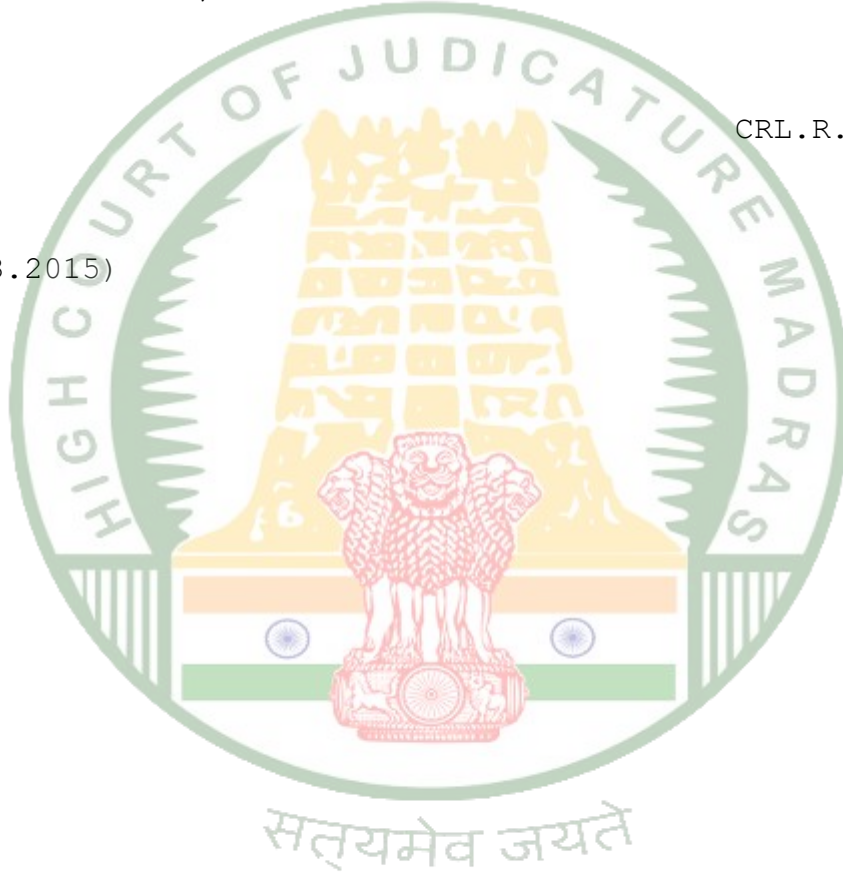
1.The Principal Sessions Judge,
Salem.

2.The Inspector of Police,
Mettur Police Station,
Salem District.

3.The Public Prosecutor,
High Court of Madras,
Chennai.

CRL.R.C.No.102 of 2015

SR (CO)
PSI (09.03.2015)



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