

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.No.23771 of 2015

and

M.P.No.1 of 2015

1.Sasi Thomas

2.Joju Thomas

Petitioners

Vs.

1.Inspector of Police,
CBCID Nilgiri Unit,
Nilagiri District.

2.Jose Paul

Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records in proceeding in S.C.No.45 of 2005 on the file of the Court of the Fast Track Mahila Court of the Nilagiris at Udhagamandalam and direct the Fast Track Mahila Judge of the Nilagiris at Udhagamandalam, to conduct trial for offences under Sections 302 and 201 of the Indian Penal Code in accordance with the charge sheet for offences under Sections 302 and 201 of the Indian Penal Code and in compliance with the Judgement of the Honourable Supreme Court dated 24.11.2006 in Criminal Appeal 1211 of 2006 and further take cognizance and act in accordance with law on the petitions filed under Sections 311 and 295 of the Code of Criminal Procedure in Crl.M.P.No.301 of 2015 in S.C.No.45 of 2005.

For Petitioners

:

Mr.P.V.Ravichandran

For Respondent

:

Mr.C.Emalias,

No.1

Addl. Public Prosecutor

For Respondent

:

Mr.K.V.Sridharan

No.2

O R D E R

The criminal original petition has been filed to call for the records in proceeding in S.C.No.45 of 2005 on the file of the Court of the Fast Track Mahila Court of the Nilagiris at Udhagamandalam and direct the Fast Track Mahila Judge of the Nilagiris at Udhagamandalam, to conduct trial for offences under Sections 302 and 201 of the Indian Penal Code in accordance with the charge sheet for offences under Sections 302 and 201 of the

Indian Penal Code and in compliance with the Judgement of the Honourable Supreme Court dated 24.11.2006 in Criminal Appeal 1211 of 2006 and further take cognizance and act in accordance with law on the petitions filed under Sections 311 and 295 of the Code of Criminal Procedure in Crl.M.P.No.301 of 2015 in S.C.No.45 of 2005.

2. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent No.1 and the learned counsel appearing for the respondent No.2.

3. Earlier, this petitioner approached the Hon'ble Supreme Court for a direction for further investigation. The Hon'ble Supreme Court denied the relief and has passed the following orders;

"35. The decisions referred to herein before clearly show that the trial court even is not powerless. It, if a case is made out, can exercise its discretionary jurisdiction under Section 311 of the Code of Criminal Procedure as also Section 391 thereof. In the event of open marshalling of the evidence, it comes to the opinion that a case has been made out for alteration of charge; it indisputably can do so in exercise of its power under Section 311 of the Code of Criminal Procedure. In a given case again it can consider the question from the viewpoint of the appellant herein as regards the existence of circumstances which point to the guilt of Respondent 4.

36. We are also of the opinion that it is a fit case where the appellant should be permitted to engage a lawyer on his behalf who would assist the Public Prosecutor. We place on record that the learned counsel for the State assured us that the same shall not be objected to. We hope and trust that in the event the State is of the opinion that the prosecution should be conducted by a Public Prosecutor of repute and having sufficient experience, it would not hesitate to appoint one.

37. We would also direct the learned trial Judge, if any occasion arises therefor, to exercise his power under Section 311 of the Code of Criminal Procedure upon considering the facts and circumstances of this case.

38. We may reiterate that although it is not beyond the jurisdiction of this Court to direct further investigation by CBI as contra distinguished from reinvestigation at this

stage, but we decline to do so keeping in view the fact that 47 witnesses including the appellant himself have already been examined and recourse thereto can be taken if during trial a case therefor is found to have been made out.

39. This appeal is disposed of with the aforementioned directions."

4. The learned counsel appearing for the petitioner submitted that the defacto complainant filed an application under Section 311 Cr.P.C before the trial Court which was returned with the following endorsement;

" 06.08.2015

This petition to be filed through Special Public Prosecutor after giving notice to other side.
Hence, returned."

5. This Court does not find any infirmity in the order passed by the trial Court. However, this Court directs the Special Public Prosecutor in charge of the case to work in tandem with the counsel for the defacto complainant in effectively prosecuting the accused in the trial Court.

6. This Court directs the Special Public Prosecutor to represent the petition under section 311 Cr.P.C under his hand and the trial Court shall pass orders after hearing the accused in accordance with law.

7. In view of the above, the trial Court and the Special Public Prosecutor are directed to follow the mandates of the Hon'ble Supreme Court while conducting the trial.

With the above directions, the criminal original petition is closed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

sms

To

1. Inspector of Police,
CBCID Nilgiri Unit,
Nilagiri District.

2. The Fast Track Mahila Court,
The Nilagiris, Udthagamandalam.

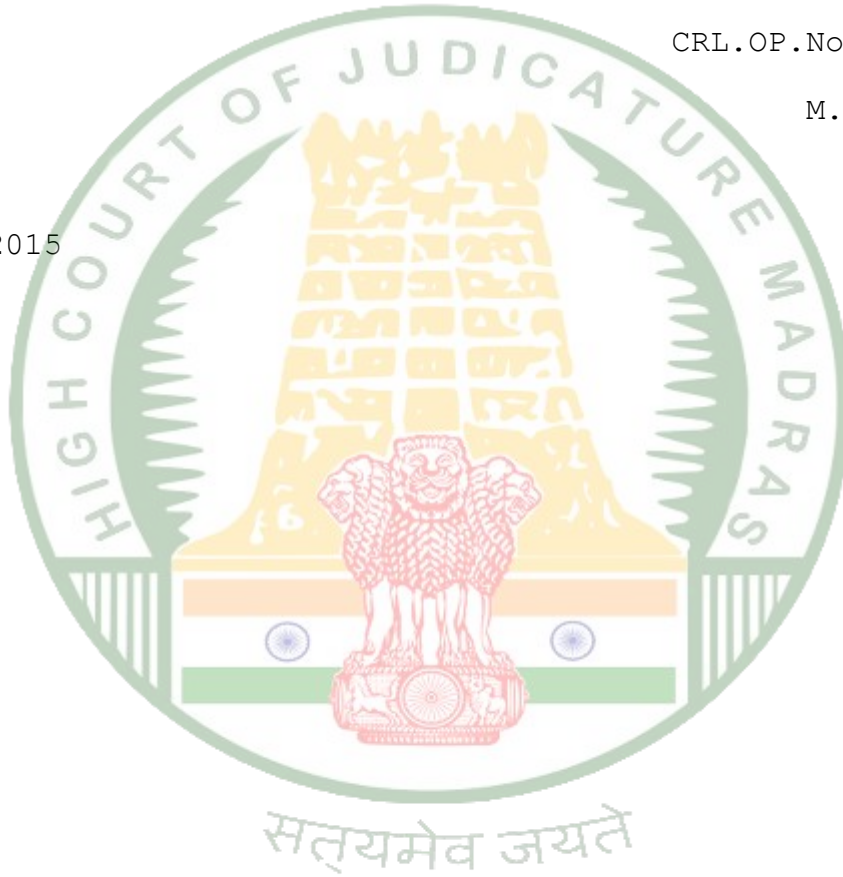
3. The Public Prosecutor,
High Court, Madras.

4.The Special public Prosecutor,
Fast Track Mahila Court, Nilgiris, Udhagamandalam.

5 cc to Mr.P.V.Ravichandran , Advocate Sr.No.51568
1 cc to Mr.K.V.Sridharan , Advocate Sr.No.51750

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