

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.04.2015
DELIVERED ON : 17.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.4569 of 2015
and M.P.Nos.1 and 2 of 2015

1.Selvaraj
2.Saravanan
3.Vijayalakshmi

.. Petitioners

vs.

State by
Inspector of Police
T-11, Tiruninravur Crime Branch
Sub-urban Commissionarate
St.Thomas Mount, Chennai.

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 04.02.2015 and made in C.M.P.No.6449 of 2014 in C.C.No.75 of 2011 on the file of the Judicial Magistrate-I, Poonamallee.

For Petitioners : Mr.T.Munirathnam Naidu
For Respondents : Mr.M.Mohamed Riyaz
Govt.Advocate [crl.side]

O R D E R

This petition has been filed challenging the order dated 04.02.2015, made in C.M.P.No.6449 of 2014 in C.C.No.75 of 2011 on the file of the Judicial Magistrate-I, Poonamallee.

2. Heard the learned counsel for the petitioner and the learned Government Advocate [crl.side] appearing for the State.

3. The accused are the petitioners before this Court, who are facing trial in C.C.No.75 of 2011 for offences under Sections 465, 467, 468 r/w 471 and 420 r/w 120 B IPC.

4. It is the case of the prosecution that the property in dispute belongs to one Vasuki Devi, who is the de facto complainant in this case, and that these petitioners/accused had forcibly taken

possession of her property and had created encumbrance on the property, by registering a document on 07.09.1995 as Document No.3823/1995 before the SRO, Avadi, as if they had purchased the property from one Tarammal. On the complaint lodged by the de facto complainant, a case in Cr.No.46/2009 was registered and after completing the investigation, the police filed Final Report which was taken on file as C.C.No.75 of 2011. The prosecution examined two witnesses. The respondent State filed an application in CrI.M.P.No.6449 of 2014 under Section 311 Cr.P.C. for the purpose of further cross examination of P.Ws.1 and 2 and for marking certain documents. The trial Court allowed the application on 04.02.2015, aggrieved by which the accused have approached this Court.

5. The learned counsel for the accused submitted that earlier the respondent police had filed a similar petition in C.M.P.No.4880 of 2014, which was dismissed by the trial Court on 15.10.2014 and aggrieved by which the State approached the High Court in CrI.R.C.No.1231 of 2014 and that was also dismissed. Therefore, the learned counsel contended that this matter cannot be re-agitated.

6. This Court carefully perused the records in this case and found that the earlier petition filed by the prosecution in C.M.P.No.4880 of 2014 was dismissed by the trial Court and the State approached this Court invoking its revisional jurisdiction by filing CrI.R.C.No.1231 of 2014. This Court while dismissing CrI.R.C.No.1231 of 2014 on 03.12.2014, has stated as follows:

"4. A perusal of the order under challenge reveals that the petition seeking recall of P.W.1 did not inform the ambiguity which was sought to be clarified by his recall as also the documents sought to be marked by it and hence, the Court below thought it fit to dismiss the same. This Court finds no error in the order under challenge. Hence, this revision shall stand dismissed. However, this Court makes it clear that it would be open to the petitioner to inform adequate particulars and move a petition afresh under Sections 311 Cr.P.C. It is to be noted that a petition under Section 311 C.P.C. may be moved at any stage of the proceedings and the only requirement for allowing the same is that the evidence sought to be produced appears to be essential in arriving at a just decision in the case."

7. Therefore, this Court has clearly held that the earlier petition filed by the prosecution lacked particulars and therefore, the dismissal of the petition by the trial Court was correct. But this Court has given liberty to the prosecution to file a petition

afresh with full particulars. Therefore, it cannot be stated that this petition should be dismissed on the ground that the relief was denied earlier.

8. The learned counsel further submitted that such additional documents can be marked only during further investigation under Section 173(8) Cr.P.C. I am unable to persuade myself to agree with this submission, because the scope of further investigation is different and the scope of marking documents that are relevant and necessary for the just decision of the case under Section 311 Cr.P.C is different. The Supreme Court in Iddar vs. Aabida [(2007) AIR SCW 5490] has held that the provisions of Section 311 can be invoked by the Court any time, for making the best evidence available in a given case and the objection of the accused that it is being done for filling the lacuna should not prevent the Court from exercising its power under Section 311 Cr.P.C., in the interest of justice.

9. In this case what has to be seen is whether the documents that were produced by the prosecution would be relevant for the just decision of the case. The documents that are produced by the prosecution are:

- Encumbrance Certificate for Plot No.28 in respect of the property in dispute
- Advocate's notice and the reply notice
- Letters dated 26.03.2013, 14.05.2013 and 07.08.2013 given by the Municipality in connection with the property in dispute.
- Letter given by the Electricity Board
- Partnership Deed relating to Somasundara Reddiar
- Encumbrance for the de facto complainant's property from 30.12.1993 to 23.12.2013.

10. This Court perused the allegations in the Final Report and found that they relate to creation of sale deeds by the accused for the properties of the de facto complainant, knowing full well that the property does not belong to them. The documents referred to above are just and necessary for arriving at a just decision in this case, as they are relevant to decide the facts in issue. Of course, the accused would be entitled to copies of those documents for the purpose of effectively cross examining the witnesses. Hence, this Court finds no infirmity in the order of the trial Court and accordingly, this petition is dismissed. Consequently, connected miscellaneous petitions are closed. The trial Court is directed to furnish copies of documents to the accused and proceed with the examination of the witnesses.

-s/d-
Deputy Registrar(J)

True Copy

Sub-Assistant Registrar

To

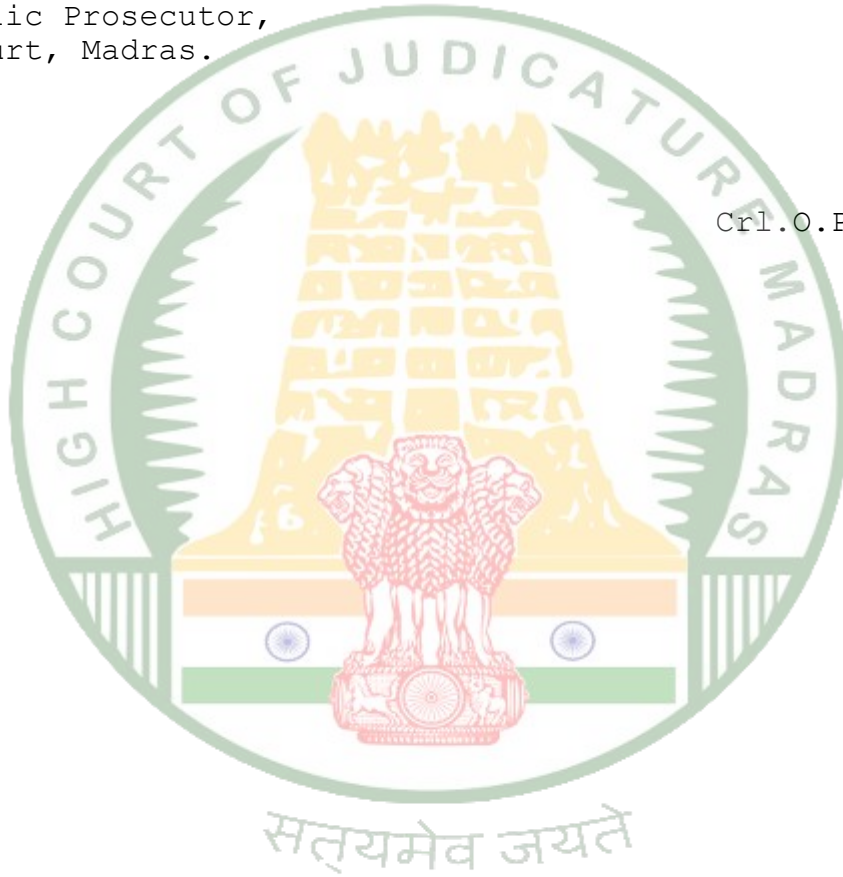
1.The Inspector of Police
T-11, Tiruninravur Crime Branch
Sub-urban Commissionarate
St.Thomas Mount, Chennai.

2.The Judicial Magistrate No.I,
Poonamallee.

3.The Public Prosecutor,
High Court, Madras.

mp(co)
prk28/4

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