

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.Nos.1313 and 1314 of 2016

and

Crl.M.P.Nos.11847 and 11848 of 2016

Ganapathy
S/o.Kannappan

... Petitioner in Crl.R.C.No.
1313/2016

Arunkumar
S/o.Natarajan

... Petitioner in Crl.R.C.No.
1314/2016

Vs.

State represented by
Inspector of Police,
Reddichavadi Police Station,
Cuddalore District.
Crime No.107 of 2016
both revisions

... Respondent in

Criminal Revisions filed under Sections 397 and 401
Cr.P.C. against the orders in Crl.M.P.Nos.54 and 55 of 2016 in
S.C.No.164 of 2016 on the file of I Additional District and
Sessions Judge, Cuddalore, dated 04.11.2016.

For Petitioners :Mr.R.Sankarasubbu
[in both revisions]

For Respondent :Mr.K.Madhan,
Government Advocate [Crl.side]

COMMON ORDER

These revisions arise against the orders of learned I
Additional District and Sessions Judge, Cuddalore, passed in
Crl.M.P.Nos.54 and 55 of 2016 in S.C.No.164 of 2016 on
04.11.2016.

2. Pursuant to investigation in Crime No.107 of 2016, respondent has filed a final report informing commission of offences u/s.147, 302(2) counts IPC as also offences u/s.147, 148, 448, 449 and 506(ii) r/w 34 IPC. Petitioner in Crl.R.C.No.1313 of 2016, who is the ninth accused in the case, sought a direction for adjournment of the case by three months contending that Section 303 Cr.P.C. afforded him a right to be represented by a counsel of his choice. Court below, under orders dated 04.11.2016 in Crl.M.P.No.54 of 2016, afforded time for engaging counsel till 09.11.2016, but proceeded to frame charges. Petitioner in Crl.R.C.No.1314 of 2016, who is the fifth accused, has filed a petition u/s.227 Cr.P.C. seeking discharge and the same has been dismissed under orders dated 04.11.2016 in Crl.M.P.No.55 of 2016. Challenging the said orders, the present revisions have been filed.

3. Heard learned counsel for petitioners and learned Government Advocate [Crl.side].

4. This Court finds force in the submission of learned counsel for petitioners that the Court below has erred in proceeding to frame charges in exercise of power u/s.228 Cr.P.C. in circumstances where the petitioner in Crl.R.C.No.1313 of 2016/A9 has not been represented by a counsel. It is to be seen that the present case is one where prosecution alleges murder and therefore, Chapter XVIII of the Criminal Procedure Code becomes applicable. Section 226 Cr.P.C. requires the Public Prosecutor to open the case for prosecution broadly explaining the prosecution case and how it intended to prove the guilt of the accused. Thereupon, Section 227 Cr.P.C. requires the Court to enter upon the consideration whether the case is one where the accused may be required to face trial or whether they may be discharged there without. Only upon such decision having been arrived at, can a Court proceed to frame charges u/s.228 Cr.P.C. At the stage of 227 Cr.P.C., the accused would have a right to make submissions towards convincing the Court concerned that the case was one wherein he ought to be discharged and ought not be required to face trial. Therefore, the right of an accused to be represented by counsel is provided u/s.303 Cr.P.C. has become applicable even at the stage of 227 Cr.P.C. In the instant case, it is seen that such right has not been made available to petitioner in Crl.R.C.No.1313 of 2016/A9. While so, the charges framed on 04.11.2016 in S.T.C.No.164 of 2016 on the file of learned I Additional District and Sessions Judge, Cuddalore, cannot hold good. For the aforesaid reason, the order of framing of charges dated 04.11.2016 shall stand set aside.

5. A perusal of the order in Crl.M.P.No.55 of 2016 in S.C.No.164 of 2016 dated 04.11.2016 reveals that it has been the

contention of petitioner/A5 that neither his name nor that of his father have been clearly stated in the investigation report and list witnesses 2 to 4 also did not correctly inform the same and therefore, he had been arrayed as an accused in a mechanical fashion. Such contentions would have to be tested during trial.

6. At the hearing on the earlier occasion, Mr.R.Sankarasubbu, learned counsel for petitioners, had been required to inform the name of the counsel, who the petitioner in CrI.R.C.No.1313 of 2016/A9 wishes to engage. Today, learned counsel, submits that a counsel of fairly senior standing, Shri.Panchatcharam, has consented to appear on behalf of the petitioner in CrI.R.C.No.1313 of 2016/A9. Learned counsel further informs that under orders in CrI.O.P.No.23143 of 2016 dated 16.11.2016, this Court, while rejecting bail for accused Nos. 1, 2, 3, 4, 6 & 9, has directed learned I Additional District and Sessions Judge, Cuddalore, to dispose of S.C.No.164 of 2016 within a period of three months on a day-to-day basis. It is seen that the very order under challenge (CrI.M.P.No.55 of 2016 in S.C.No.164 of 2016) informs that this Court under orders in C.R.P.No.23345 of 2016 dated 20.10.2016, has directed the trial Court to dispose of the case within a particular time. Given the earlier directions of this Court, this Court would direct learned I Additional District and Sessions Judge, Cuddalore, to call the case in S.C.No.164 of 2016 on 14.12.2016 towards enabling appearance of counsel for A9 before it. The Court below shall, thereafter, deal with the case as expeditiously as possible towards effecting compliance with the orders of this Court.

In the result,

- (i)CrI.R.C.No.1313 of 2016 is allowed. The order of learned I Additional District and Sessions Judge, Cuddalore, passed in CrI.M.P.No.54 of 2016 in S.C.No.164 of 2016 on 04.11.2016, is set aside.
 - (ii)CrI.R.C.No.1314 of 2016 is dismissed.
- Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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//True Copy//

Sub Assistant Registrar

To

1.The I Additional District and Sessions Judge,
Cuddalore.

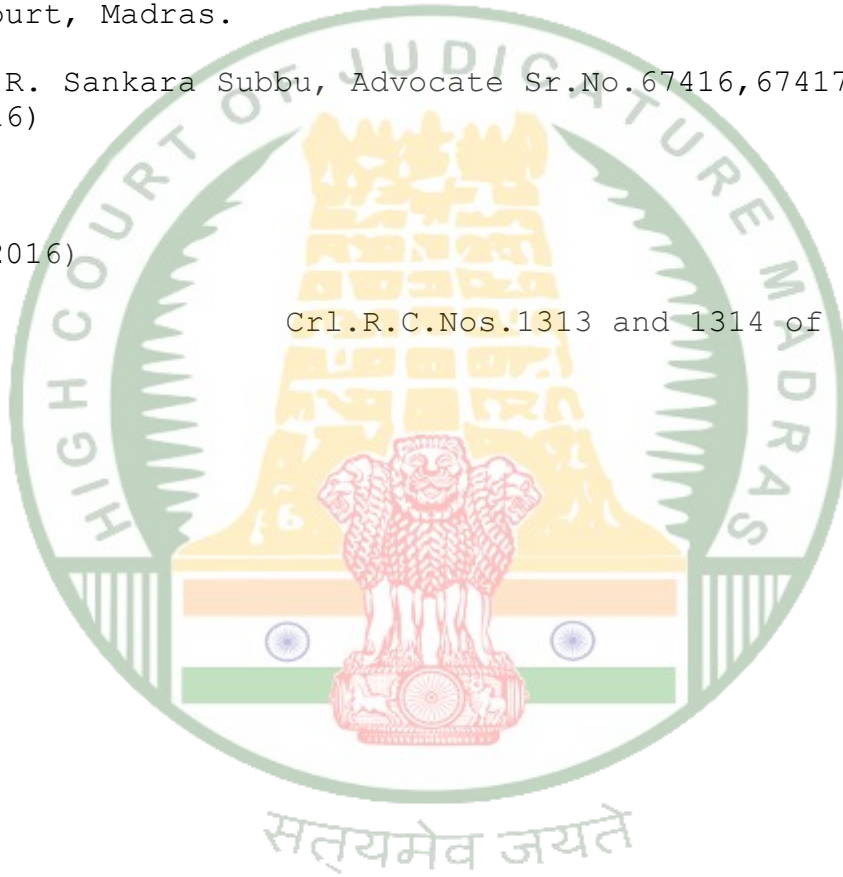
2.The Inspector of Police,
Reddichavadi Police Station,
Cuddalore District.

3.The Public Prosecutor,
High Court, Madras.

+2cc M/s. R. Sankara Subbu, Advocate Sr.No.67416,67417
(20/12/2016)

lrs (CO)
md(14/12/2016)

Crl.R.C.Nos.1313 and 1314 of 2016



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