

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.12.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.1618 of 2016

and

Crl.M.P.Nos.13254 and 13255 of 2016

Murugan
S/o.Pannappan

... Petitioner

Vs.

State represented by
Inspector of Police,
Eriyur Police Station,
Dharmapuri District.
Crime No.86 of 2012

... Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the order of learned Principal Sessions Judge, Dharmapuri, passed in C.M.P.No.1831 of 2016 in S.C.No.238 of 2014 on 10.11.2016.

For Petitioner : Mr.R.John Sathyan
For Respondent : Mr.M.Mohammed Riyaz
Government Advocate [Crl.side]

O R D E R

This revision arises against the order of learned Principal Sessions Judge, Dharmapuri, passed in C.M.P.No.1831 of 2016 in S.C.No.238 of 2014 on 10.11.2016.

2. In S.C.No.238 of 2014 on the file of learned Additional Sessions Judge, Dharmapuri, petitioner/A1 and another were charged as follows:

Accused	Section of law
A1	364 IPC
A2	364 r/w 34 IPC
A1 & A2	397, 302 and 201 r/w 302 IPC

Trial Court, under judgment dated 19.08.2015, rendered a finding of conviction as follows:

Accused	Section of law	Sentence
A1	364 IPC	Life Imprisonment
A2	364 r/w 34 IPC	Life Imprisonment

A1 & A2	397 and 201 r/w 302 IPC	7 years R.I. and fine of Rs.1,000/- each i/d 3 months R.I.
A1 & A2	302 IPC	Life imprisonment and fine of Rs.1,000/- each i/d 3 months R.I.

There against, petitioner preferred Crl.A.No.43 of 2016 before this Court. Under judgment dated 05.08.2016, this Court was pleased to allow the appeal, set aside the conviction and sentence and remanded the case in S.C.No.238 of 2014 on the file of learned Additional Sessions Judge, Dharmapuri, to the file of learned Principal Sessions Judge, Dharmapuri, for fresh disposal. This Court was pleased to permit the prosecution to recall any witness or to summon any witness afresh and examine them. Similar right was also accorded to the accused. This Court further observed that both prosecution and defence shall be at liberty to prove any documentary evidence afresh. Learned Principal Sessions Judge, Dharmapuri, thus came to be seized of the matter. Before such Court, a Village Administrative Officer was examined as PW-9 and in the course of his deposition, he has informed the date of arrest of accused as 05.04.2012. Contending that while being examined as PW-7 before learned Additional Sessions Judge, Dharmapuri, the Village Administrative Officer had deposed that arrest had been effected on 02.04.2012 itself, petitioner moved Crl.M.P.No.1831 of 2016 seeking marking of relevant portion of the evidence recorded by learned Additional Sessions Judge, Dharmapuri, at the first instance. Court below, has dismissed such petition and there against, the present revision stands filed.

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

4. The evidence recorded at the initial trial and before learned Additional Sessions Judge, Dharmapuri, also forms part of the records in the case and it is the duty of a Court to go through the same. As such, no necessity for marking any portion thereof in the trial before learned Principal Sessions Judge, Dharmapuri, arises. It inter alia is the contention of the prosecution that the evidence at the earlier instance came to be wrongly recorded. Without any reservation, this Court would observe that it is not open to prosecution to raise such contention. One would necessarily have to go by records. This Court, however, notes that learned Principal Sessions Judge, Dharmapuri, has expressed the view that the evidence recorded before learned Additional Sessions Judge, Dharmapuri, at first instance cannot be looked into. This, besides being erroneous is highly dangerous. It would not be proper to allow further trial in the case before the same Judge. It is always open to the accused/his counsel to bring out the contradictions in the evidence of witnesses. It is for the Court concerned to decide upon the propriety thereof taking into consideration all

attendant facts and circumstances in the case.

The Criminal Revision Case is disposed of with a direction to transfer of case pending trial in S.C.No.238 of 2014 on the file of learned Principal Sessions Judge, Dharmapuri, to the file of learned I Additional District and Sessions Judge, Dharmapuri, who shall proceed from the stage at which the case now stands. Connected miscellaneous petitions are closed.

gm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Sessions Judge,
Dharmapuri.
 - 2.The I Additional District and Sessions Judge,
Dharmapuri.
 - 3.The Inspector of Police,
Eriyur Police Station,
Dharmapuri District.
 - 4.The Public Prosecutor,
High Court, Madras.
- + 1 cc to Mr.R.John Sathyan, Advocate Sr 73139

KR/31/01/17

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Cr1.R.C.No.1618 of 2016

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