

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.26840 of 2015

D.Shankar

... Petitioner

Vs

1. S.Vinothkumar

2. G.Prakash

3. P.Suresh

4. State rep. By
the S.I.of Police,
Valsaravakkam P.S.,
Valsaravakkam,
Chennai

... Respondents

Prayer: This Petition is filed under Section 482 Cr.P.C.,
praying to set aside the order made in Crl.M.P.No.3500 of 2014
dated 8.9.2014 in C.C.No.36 of 2012 on the file of the Judicial
Magistrate No.I, Poonamallee, Thiruvallur District.

For Petitioner : Mr.K.J.Nithianandam

For Respondents : Mr.V.Vargees Amal Raja-R1 to R3
Mr.C.Emalias,
Additional Public Prosecutor for R4

ORDER

This petition has been filed by the petitioner against the
order, dated 8.9.2014 in Crl.M.P.No.3500 of 2014 in C.C.No.36 of
2012 passed by the learned Judicial Magistrate No.I,

Poonamallee, Thiruvallur District, in and by which, the petition under Section 311 Cr.P.C., filed by the prosecution, praying to recall PW.9 and to issue fresh summons to one Dr.Suresh Babu, came to be dismissed.

2. The petitioner is the defacto complainant. He lodged a complaint before the 4th respondent/police against the accused/respondents 1 to 3, which was registered in Crime No.1608 of 2011 for the offences under Sections 341, 323 and 506 (ii) IPC. After completion of the investigation, a final report was filed. However, pursuant to the directions of this Court, learned Judicial Magistrate No.I, Poonamallee ordered re-investigation. Later, 4th respondent/police filed additional charge sheet. During the course of trial, as many as 9 witnesses were examined and further trial is pending. While so, the prosecution has moved a petition under Section 311 Cr.P.C., praying to recall PW.9 Dr.Baskaran, Government Hospital, Royapettah and also to issue fresh summons to Dr.Suresh Babu, Government Hospital Royapettah and Dr.Arulmozhi Rajan, to speak about O.P.Chit and the initial of A.R., and to speak about the weapons used since the prosecution had left to examine them on earlier occasion due to oversight. By order, dated 8.9.2014, the learned Judicial Magistrate dismissed the petition on the ground that the prosecution has filed the petition to fill up the lacuna.

3. It is the specific case of the prosecution that the accused assaulted the defacto complainant with iron rod and wooden log and in order to prove the same, the prosecution has moved a petition under Section 311 Cr.P.C. to recall PW.9 Dr.Baskaran to mark O.P.Chit issued to the injured/defacto complainant and to clarify the place of occurrence and also to issue fresh summons to Dr.Suresh Babu to speak about the weapon (iron rod & wooden log) with which, the defacto complainant. Having regard to the nature of the offence wherein, the defacto complainant was attacked with the weapons (iron rod & wooden log) by the accused persons and in the interest of justice, I feel it appropriate to afford an opportunity to the prosecution to examine the witnesses by permitting the respondents/accused to cross examine them.

4. Accordingly, the order, dated 8.9.2014 made in CrI.M.P.No.3500 of 2014 in C.C.No.36 of 2012 is hereby set aside. The learned Judicial Magistrate No.1, Poonamallee is directed to entertain the petition as prayed for and also

provide an opportunity to the accused persons to cross-examine them. Consequently, the Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Suk

To

- 1.The Judicial Magistrate I,
Poonamallee.
- 2.The Chief Judicial Magistrate,
Thiruvallur District.
- 3.The Sub Inspector of Police,
Valasaravakkam Police Station,
Valasaravakkam, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.J.Nithianandam, Advocate, S.R.No.382

+1cc to Mr.V.Vargees Amal Raja, Advocate, S.R.No.1452

Cr1.O.P.No.26840 of 2015

KK(CO)
CA(02/02/2016)

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