

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.1775 of 2016

And

Crl.M.P.No.869 of 2016

1.Kumaravel
2.Shobana

... Petitioner

Vs.

State
by Deputy Superintendent of Police, CBCID
Central Crime Branch, Salem.
(Crime No.109/2010)

... Respondent

Prayer :

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to set aside the order passed by the learned Principal Assistant Sessions Judge, Salem, in C.M.P.No.229/2015 dated 17.11.2015 in S.C.No.259/2012 on the file of Principal Assistant Session Judge, Salem by calling records.

For Petitioner : Mr.M.G.Udaya Shankar

For Respondent : Mr.C.Emalias

Additional Public Prosecutor

ORDER

Heard.

2.The petitioner has come forward with this petition challenging the impugned order passed in C.M.P.No.229 of 2015 on 17.11.2015 dismissing the petition filed under Section 311 of Cr.P.C. to recall P.W.1.

3.The learned counsel appearing for the petitioner submitted that the petitioners are the accused and they are facing criminal trial under Section 306 of IPC. Questioning under Section 313 of Cr.P.C. was over and C.M.P.No.229 of 2015 has

been filed for recalling P.W.1 to confine some question in respect of filing of complaint before the Superintendent of Police and writ petition before this High Court of Judicature for transferring the investigation to CBCID, but the Trial Court without considering the same, has dismissed the petition. Hence this petition for setting aside the impugned order.

4. At this juncture, the learned Additional Public Prosecutor submitted that only with a view to drag on the proceedings, the present petition has been filed instead of letting in evidence and advancing arguments and there is no necessity for recalling P.W.1. He further submitted that the second complaint is only status of the statement recorded under Section 161 of Cr.P.C. He also filed a detailed counter and prayed for dismissal of the petition.

5. Considering the rival submissions and on perusal of typed set of papers, it is known that one Arul Nathan has lodged a complaint at Karumalaikoodal Police relating to un-natural death of younger brother Rameshkumar on 07.06.2010. On that basis a case in Crime No.109 of 2010 under Section 174 Cr.P.C., has been registered and the Inspector of Police continued the investigation and altered the section of law to 306 IPC. The petitioners were arrested on 24.09.2010 and remanded to judicial custody. But they were enlarged on bail. Subsequently, the defacto complainant filed petition for transfer of investigation and it was dismissed. After due investigation, charge sheet has been levied against the petitioners for the offence punishable under Section 306 of IPC and it was taken on file in P.R.C.No.06 of 2012 and committed to the learned Principal Assistant Sessions Court, Salem in S.C.No.259 of 2012. Now, charges were framed and prosecution evidence over.

6. When the matter was posted for defence side evidence, the petitioners have come forward with the petition for recalling P.W.1. In that they assigned the reason which is as follows:

".....The copy of the petition filed by him before Superintendent of Police, Salem has been sent for by the accused. The accused has marked the (Secondary evidence) copy of the petition given by PW1 before Superintendent of Police, Salem. So they want to cross examine PW1 with regard to that complaint.

6. Hence they humbly pray that P.W1 may be permitted to be recalled for the purpose of further cross examination and thus justice be rendered."

but, admittedly the case has been registered only on the basis of the complaint given by the brother of the deceased one Arul

Nathan under Section 174 Cr.P.C. So, the complaint given to the Superintendent of Police is only the status of the statement recorded under Section 161 of Cr.P.C. and it was not termed as complaint.

7.In such circumstances, I am of the view that there is no necessity to confronting the statement, second complaint given to the Superintendent of Police. Furthermore, filing of petition for transfer has already been dismissed. In such circumstances, I do not find any reason to interfere with the finding of the Trial Court and it is confirmed.

8.This Criminal Original Petition is dismissed and the order passed by the learned Principal Assistant Sessions Judge, Salem, in C.M.P.No.229 of 2015 dated 17.11.2015 in S.C.No.259 of 2012 is confirmed. Consequently, the connected miscellaneous petition is also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Deputy Superintendent of Police, CBCID
Central Crime Branch, Salem.
(Crime No.109/2010)

2.The Public Prosecutor
High Court, Madras.

+1 cc to Mr.M.G.Udaya Shankar Advocate sr.14743

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