

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2016

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

CrI.O.P. No.21570 of 2016

Kannan

Petitioner

vs.

1 Natarajan
2 Amudha
3 Uma @ Umamaheswari
4 Valliammal
5 Govindasamy
6 State represented by
the Inspector of Police
Karumalaikoodal Police Station
(Cr.No.537 of 2003)

Respondents

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to direct the Inspector of Police, Karumalaikoodal Police Station to collect the document viz., dying declaration of the petitioner concerned in Cr.No.537 of 2003 of Mecheri Police Station from the file of the Judicial Magistrate cum District Munsif, Omalur and produce the same before the Judicial Magistrate No.II, Mettur.

For petitioner Mr. K.V. Sridharan

For R6

Mr. C. Emalias
Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to direct the Inspector of Police, Karumalaikoodal Police Station, to collect the document viz., dying declaration of the petitioner concerned in Cr.No.537 of 2003 of Mecheri Police Station from the file of the Judicial Magistrate cum District Munsif Court, Omalur and produce the same before the Judicial Magistrate No.II, Mettur.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. It is seen that in an incident that had taken place on 06.09.2003, this petitioner suffered serious injuries and was admitted to Mohan Kumaramangalam Hospital, Salem as an inpatient. While the petitioner was taking treatment, the police came to the hospital and recorded his statement, based on which a case in Cr.No.537 of 2003 has been registered by

the respondent police for various offences including Section 307 IPC against five accused. Since the petitioner was in a very critical condition, the police made a requisition to the Magistrate for recording his dying declaration. Pursuant to the requisition made by the police, it is stated that the Judicial Magistrate No.IV, Salem came to the hospital and recorded the dying declaration of the petitioner on 06.09.2003. Fortunately, the petitioner survived and now investigation in Cr.No.537 of 2003 has been completed and a Final Report has been filed in PRC No.4 of 2005 before the Judicial Magistrate No.2, Mettur and committal proceedings are pending.

4. Under such circumstances, the petitioner, who is the de facto complainant in the case is seeking the statement that was recorded by the learned Judicial Magistrate No.IV, Salem on 06.09.2003, on the ground that it will be treated as a previous statement and will corroborate his evidence in the witness box.

5. Learned counsel for the petitioner submitted that the Judicial Magistrate-IV, Salem recorded the statement on 06.09.2003 and had inadvertently sent it to the Judicial Magistrate, Omalur. The police have also not bothered to collect the statement from the Judicial Magistrate, Omalur.

6. In the considered opinion of this Court, when a person survives the declaration, it loses the relevancy u/s 32 of the Evidence Act and it can be merely considered as a previous statement, which can be either used to corroborate or contradict the maker in the witness box. The evidence of a person in the witness box is a substantive piece of evidence and his previous statement would have very less evidentiary value except to corroborate or contradict. In this case, apart from the statement recorded by the Judicial Magistrate No.IV, Salem, the statement given by the petitioner in the hospital, which forms the basis for registering the FIR can also be used to contradict or corroborate the petitioner in the witness box.

7. Under such circumstances, the Chief Judicial Magistrate, Salem is directed to conduct enquiry, ascertaining whether the dying declaration at all was recorded by the Judicial Magistrate-IV, Salem in Mechery Police Station Cr.No.537 of 2003 [presently on the file of the Inspector of Police, Karumalaikoodal Police Station] and if so, make arrangements to have it transmitted to the Court of the Judicial Magistrate No.II, Mettur, where PRC No.4 of 2005 is pending. In the mean time, the enquiry by the Chief Judicial Magistrate, Salem, shall in no way deter the Judicial Magistrate No.II, Mettur to proceed with the committal proceedings in PRC No.4 of 2005. If the document is secured, subsequently also, it can be sent to the Sessions Court,

because it may be required only when the petitioner comes into the witness box before the Sessions Court for giving evidence.

With the above direction, this petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

gms

To

- 1 The Chief Judicial Magistrate,
Salem
 - 2 The Judicial Magistrate No.IV
Salem
 - 3 The Judicial Magistrate cum District Munsif
Omalur
 - 4 The Judicial Magistrate No.II
Mettur.
 - 5 The Inspector of Police
Karumalaikoodal Police Station
(Cr.No.537 of 2003)
 - 6 The Public Prosecutor
High Court, Madras
- 1 cc to Mr.K.V. Sridharan, Advocate, Sr. 54805

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