

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2016

CORAM:

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

Crl.O.P.No.24771 of 2016 & Crl.M.P. No.11920 of 2016

Sekar

Petitioner

Vs.

State represented by
the Inspector of Police
Mandarakupam Police Station
Cuddalore
(Crime No.141 of 2004)

Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure seeking to call for the records in C.M.P. No.3170 of 2016 in C.C.No.334 of 2009 dated 29.09.2016 on the file of the Judicial Magistrate Court No.1, Cuddalore and set aside the same.

For petitioner Mr. M. Selvam

For respondent Mr. C. Emalias
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to call for the records in C.M.P. No.3170 of 2016 in C.C.No.334 of 2009 dated 29.09.2016 on the file of the Judicial Magistrate Court No.1, Cuddalore and set aside the same.

2 It is seen that the petitioner is facing prosecution in C.C. No.334 of 2009 before the Judicial Magistrate No.I, Cuddalore, for an offence under Section 420, IPC. The prosecution examined P.Ws.1,2,3,7 8 and 9. The petitioner filed C.M.P. No.2561 of 2011 under Section 311, Cr.P.C. which was allowed by the Trial Court and the aforesaid witnesses were recalled. On their appearance, P.W.1 alone was cross-examined by the petitioner, whereas, P.Ws.2,3,7,8 and 9 were not cross-examined by the petitioner, even though they appeared before the Trial Court, pursuant to the order passed in C.M.P. No.2561 of 2011. Once again, the petitioner has filed a second petition under Section 311, Cr.P.C. to recall those witnesses, which has been dismissed by the Trial Court on 29.09.2016 by a well considered order, challenging which, the petitioner is before this Court.

3 Mr. Selvam, learned counsel for the petitioner submitted that taking into consideration, the gravity of the allegations against the petitioner, a fair opportunity should be given to him to cross-examine the aforesaid witnesses.

4 Per contra, Mr. C. Emalias, learned Additional Public Prosecutor submitted that from 2009 to 2016, the petitioner has been successfully dragging on the case.

5 This Court gave its anxious consideration to the rival submissions.

6 In Vinod Kumar vs. State of Punjab, [2015 1 MLJ (Cr1.) 288], the Supreme Court has directed that the witnesses should be cross-examined on the day they are examined-in-chief. Pursuant to the said judgment, the Registrar General of Madras High Court has issued a circular dated 18.12.2015 to all the Trial Courts to follow the mandates of the Supreme Court in Vinod Kumar (supra).

7 That apart, in this case, the petitioner earlier filed a petition under Section 311, Cr.P.C. and when the witnesses appeared, he did not choose to cross-examine them. Therefore, the accused has forfeited his right to once again file recall application to cross-examine the witnesses. This Court does not find any infirmity in the order passed by the Trial Court dismissing the second recall petition filed by the petitioner.

8 However, this Court is of the considered view that interest of justice would be sub-served if P.W.2 alone is recalled for the purpose of cross-examination, on certain terms and it is ordered accordingly. The Trial Court shall verify through police whether P.W.2 is alive and available for giving evidence and in the event, he is available, the Trial Court shall issue summons to him for his appearance on a specific date. It is made clear that if P.W.2 is in any other city or is not available, he need not be recalled. On the appearance of P.W.2, the Public Prosecutor must permit him to read his chief-examination for refreshing his memory and other records. The petitioner shall pay costs of Rs.2,000/- to P.W.2 for cross-examining him.

With the above directions, this Criminal Original Petition stands closed. Connected Cr1.M.P. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Judicial Magistrate No.1, Cuddalore.

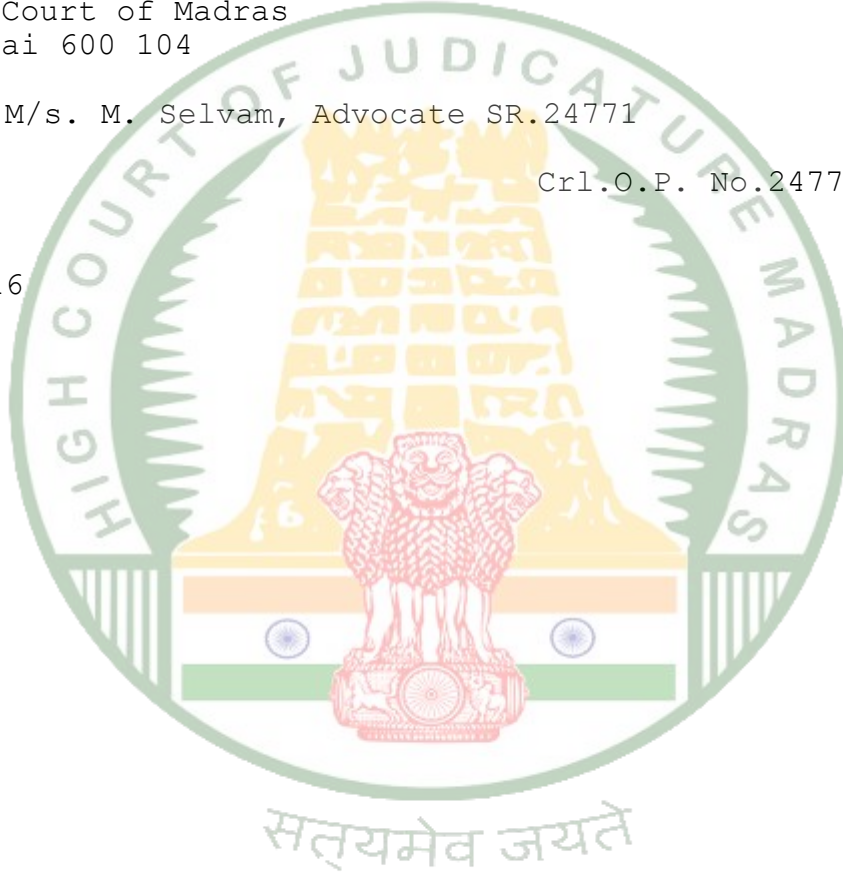
2 The Inspector of Police
Mandarakupam Police Station
Cuddalore

3 The Public Prosecutor
High Court of Madras
Chennai 600 104

+ 1 cc to M/s. M. Selvam, Advocate SR.24771

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CNR(CO)
EU 09.12.16



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