

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM

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

Crl.O.P.No.25509 of 2016

1.Madhaiyan

2.R.Rajeshkumar

3.R.Kavitha

.. Petitioners/Accused 1 to 3

vs.

The State

Rep by its Sub Inspector of Police,
Nangavalli Police Station,
Salem District.

(Crime No.379 of 2009)

..Respondent/Complainant

Criminal Original Petition filed under Section 482, Cr.P.C.
seeking to set aside the order dated 14.10.2016 made in
Crl.M.P.No.3254 of 2016 in C.C.No.212 of 2010 on the file of the
Judicial Magistrate No.1, Mettur.

For Petitioners : Mr.Karthick Raja
for M/s.A.Esakkiappan

For Respondent : Mr.C.Emalias
Additional Government Pleader

O R D E R

This Criminal Original Petition has been filed seeking to
set aside the order dated 14.10.2016 made in Crl.M.P.No.3254 of
2016 in C.C.No.212 of 2010 on the file of the Judicial
Magistrate No.1, Mettur.

2. It is seen that the petitioner is facing prosecution in
C.C.No.212 of 2010 before the Judicial Magistrate No.1, Mettur
for the offences under Sections 294(b), 323, 324 and 506(ii)
IPC. Trial commenced by examination of PW1 on 02.03.2011.
From 2011 to 2016, the petitioners did not chose to cross
examine the witnesses and on 22.08.2016, the petitioners have
filed C.M.P.No.3254 of 2016 in C.C.No.212 of 2010 for recalling
PW1 and PW7, which was rightly dismissed by the trial Court on
04.10.2016. Challenging the same, the petitioner is before this
Court.

3. Mr.Karthick Raja, learned counsel appearing for the petitioners would submit that undue prejudice would be caused to the petitioners, if the witnesses are not cross-examined by the accused.

4. Mr.C.Emalias, learned Additional Public Prosecutor appearing for the respondent submitted that PW7 has been cross-examined by the accused and that the trial Court order does not suffer from any infirmity.

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

6. In the petition filed by the accused under Section 311 Cr.P.C., he has merely stated as follows:

"In the above matter the above named accused humbly submits that the matter is posted today for the accused side evidence. While verifying the bundle, the accused came to know that the PW.1 and PW.7 has not been cross examined by the accused side. It is neither willful nor wanton."

7. In A.G. v. Shiv Kumar Yadav and Others [(2015) 9 Scale 649], the Hon'ble Supreme Court has laid down the law governing Section 311 Cr.P.C. In fact the Hon'ble Supreme Court held that change of counsel cannot be a reason for recalling the witnesses, even if the accused is in incarceration. Under the circumstances, this Court does not find any serious infirmity in the order of the trial Court.

8. Mr.Karthick Raja, learned counsel appearing for the petitioners placed reliance upon an unreported decision of this Court dated 11.03.2016 made in CrI.O.P.(MD) No.4136 of 2016 [Prabhakaran v. State]. In that judgment, the accused was facing sessions trial and this Court had permitted recall of the witnesses on the short ground that after the witnesses were examined in chief, within 21 days, the application for recalling the witnesses has been filed.

9. In this case, petition under Section 311 Cr.P.C. has been filed six years after the chief examination. Hence, the facts of that case is different to that of the present case.

10. In the result, this Criminal Original Petition is devoid of merits and accordingly, it is dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jvm

To

1.The Judicial Magistrate No.I,
Mettur.

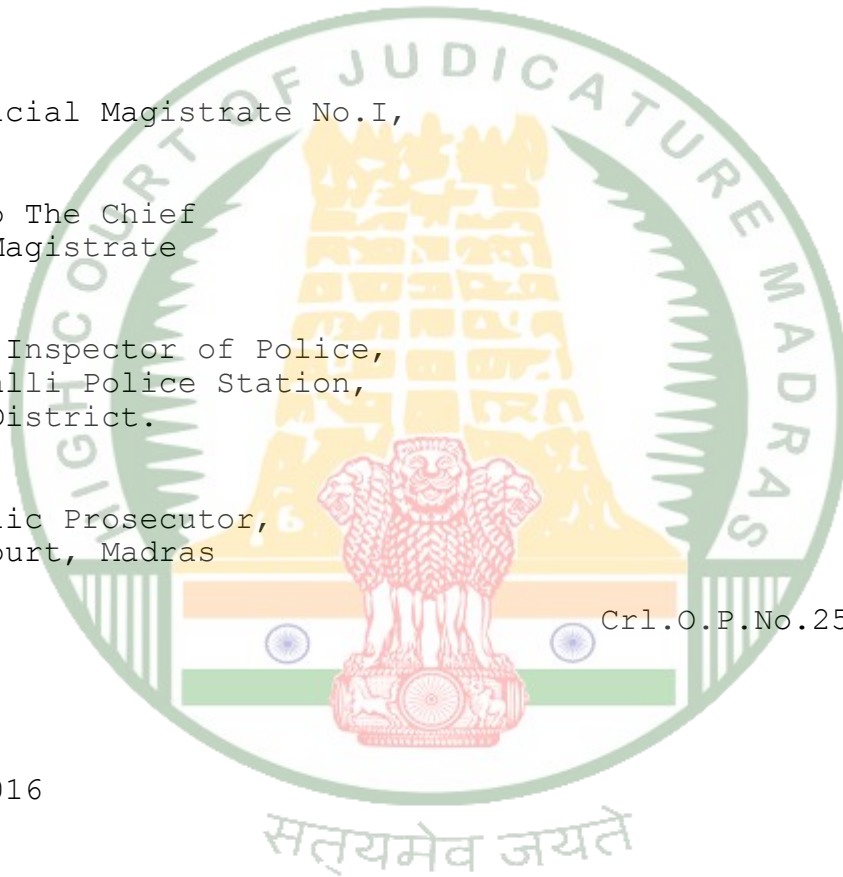
2. Do-Thro The Chief
Judicial Magistrate
Salem

3.The Sub Inspector of Police,
Nangavalli Police Station,
Salem District.

4.The Public Prosecutor,
High Court, Madras

Crl.O.P.No.25509 of 2016

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