

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2017

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THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

Crl.R.C.No.1193 of 2017

and

Crl.M.P.No.11422 of 2017

1.Raju @ Rajendran
2.Perumayee @ Prema
3.Manikandan
4.Revathy
5.Chinnapillai

... Petitioners

Vs.

State rep.by
The Inspector of Police,
Rasipuram Police Station,
Rasipuram.
Cr.No.801 of 2011.

... Respondent

Criminal Revision filed under Sections 397 and 401
Cr.P.C. to set aside the order dated 13.05.2016 made in
Crl.MP.No.54 of 2015 on the file the learned Sessions Judge,
Fast Track Mahila Court, Namakkal.

For Petitioners : Mr.R.Marudhachalamurthy

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

This revision case has been filed against the order passed by the learned Sessions Judge, Fast Track Mahila Court, Namakkal, in CrI.MP.No.54 of 2015 dated 13.05.2016.

The short facts which are required to be noticed for disposal of this revision are as follows:

2.That the petitioners herein are the accused/A2 to A6 in Crime No.801 of 2011 on the file of the respondent Police.

3.Against these petitioners as well as the other three persons, who were A1, A7 and A8, charge sheet has been filed by the respondent on 29.08.2012 for the offences punishable under Sections 306 and 498A of IPC.

4.After filing the charge sheet, A7 and A8 moved with a petition to discharge them from the charges by filing CMP No.25 of 2014 in SC.No.5 of 2014. In fact, the said petition was filed not only by A7 and A8 but also all other accused persons except A1, i.e., including these petitioners.

5.However, before the said petition was taken up for disposal on merits, the learned counsel appearing for the accused persons in that Miscellaneous Petition before the trial Court, had withdrawn the petition in respect of A2 to A6 i.e, the petitioners herein. Therefore, the trial Court proceeded with the said petition for discharge only in respect of A7 and A8 and ultimately, by order dated 25.11.2014, has allowed the said petition, by thus, A7 and A8 had been discharged.

6.Subsequently, the present petition in Crl.MP.No.54 of 2015 in SC.No.5 of 2014 was filed before the trial Court by these petitioners, who are A2 to A6 seeking for discharge and the said petition has been dismissed by the trial Court by the impugned order dated 13.05.2016, against which, the present revision has been filed.

7.I have heard Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioners as well as Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

8. The learned counsel appearing for the petitioners has invited the attention of this Court on the reasoning given by the learned trial Judge in passing the impugned order rejecting the said petition filed by the petitioners for discharge. On going through the reasoning given by the learned Judge at Para 6 of the impugned order, it finds that the learned Judge has dismissed the said petition as not maintainable before the said Court. The reason for such dismissal as given by the trial Judge in the impugned order is, that, already CrIMP No.25 of 2014 was filed by all the accused persons except A1 including these petitions. However, insofar as A2 to A6 i.e., the petitioners herein are concerned, the said petition has been withdrawn before the trial Court and based on which, the said petition was dismissed. Once the petition filed for discharge had been withdrawn and dismissed, the very same petitioner i.e., A2 to A6 cannot once again file a petition for the same relief and therefore, the learned Judge on the ground of estoppel has come to the conclusion that the said petition was not maintainable and accordingly, it was dismissed.

9.The learned Judge, in Para 6 of the impugned order, has also stated the arguments advanced on behalf of the accused persons for withdrawal of the said petition filed earlier, according to which, these accused persons did not give any instructions to their counsel to withdraw the said petition and without consent or knowledge, the same had been withdrawn and therefore, the plea of the petitioners has to be decided on merits based on the materials placed before the said Court. However, the said reasoning given by the petitioners accused persons had not been accepted by the trial Court and ultimately, dismissed through the impugned order.

10.In this regard, the learned Additional Public Prosecutor appearing for the respondent/State would state that even on merits, there is a *prima facie* case against the petitioners/accused persons and only based on the collection of evidence and the statements obtained from the witnesses, the prosecution laid charges and therefore, since the said petition has been dismissed on the ground of maintainability through the impugned order, it cannot be said that on merits, these petitioners/accused persons have got a good case to agitate

before the trial Court. Therefore, there is no infirmity on the dismissal on the ground of maintainability.

11. Though such a plea has been raised and arguments were advanced by the learned Public Prosecutor on behalf of the Prosecution before the trial Court, this Court is of the considered view that the trial Court ought not to have rejected the said petition merely on the ground that earlier petition had been withdrawn by the petitioners/accused persons. When the accused persons have specifically raised a plea that earlier withdrawal has not been made with their consent, that should have been taken into account. In the opinion of this Court, the trial Court should have gone through the said petition on merits instead of dismissing the same on the ground of maintainability.

12. In view of the aforesaid facts and circumstances and in view of the reasonings given by the learned Judge in rejecting the petition through the impugned order, this Court is of the considered view that the said order is liable to be interfered with and therefore, the matter is remitted back for

reconsideration and accordingly, the following orders are passed in this revision:

"The impugned order is set aside. The matter is remitted back to the trial Court for reconsideration/rehearing of the issue raised by the petitioners before the trial Court regarding discharge of the petitioners/accused persons.

13. It is made clear that this Court has not expressed any opinion about the merits and demerits of the case as well as the claim and counter claim made by both sides. Merely because the impugned order herein is set aside and the matter is remitted back to the trial Court for reconsideration, it shall not be construed that this Court only after having accepted the merits of the claim made by the petitioners and the points urged by the petitioners regarding the merits of the case on behalf of the defence side has passed this order. The impugned order is set aside only on the ground as referred to above, and it has been remitted back to the Lower Court for reconsideration afresh based on the available materials placed before the said Court, after affording opportunity to both sides.

With these observations and directions, this Criminal Revision Case is allowed to the extent as indicated above. Consequently, connected Miscellaneous Petition is closed.

15.09.2017

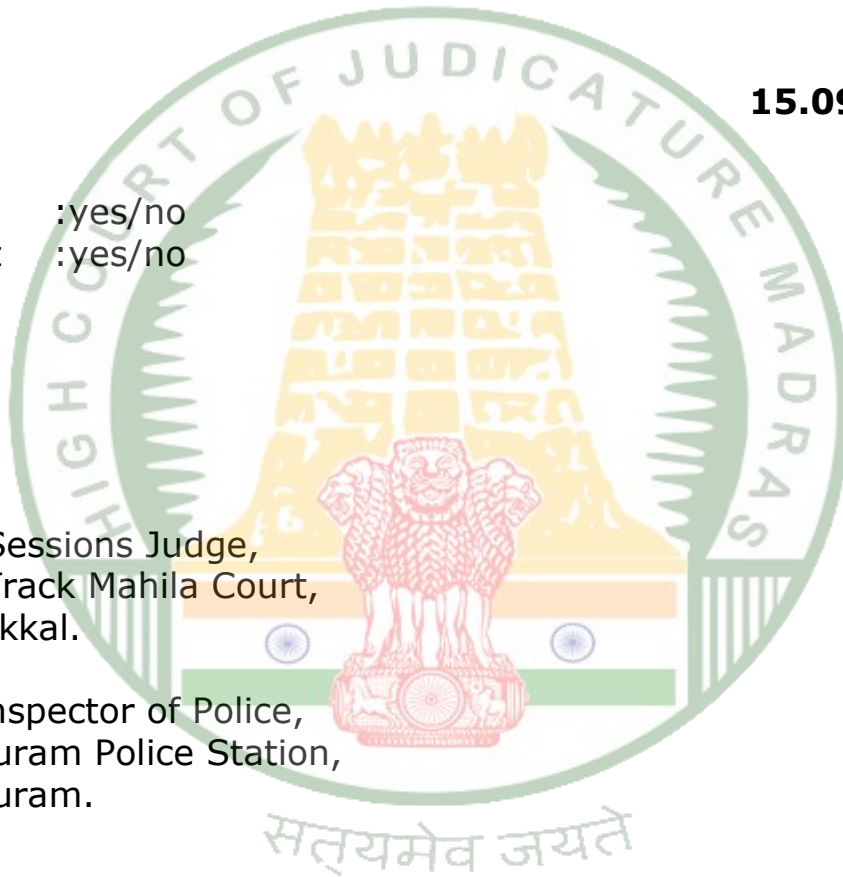
Index :yes/no

Internet :yes/no

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To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Namakkal.
- 2.The Inspector of Police,
Rasipuram Police Station,
Rasipuram.



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