

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.03.2017
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.O.P.Nos.4528 and 4529 of 2017 and
Crl.M.P.Nos.3406 and 3407 of 2017

Rama @ Ram Prasad .. Petitioner in both Crl.OPs.

Vs

State: rep.by
Inspector of Police,
P-2, Otteri Police Station,
Chennai.
(Crime No.669 of 2015).

.. Respondent in both Crl.OPs.

Crl.OP.No.4528 of 2017 filed under Section 482 of the Criminal Procedure Code, to set aside the order dismissing the petition preferred under Section 311 of the Criminal Procedure Code to recall P.Ws.19 and 20 in Crl.M.P.No.46 of 2017 in S.C.No.255 of 2016 on the file of the learned XV Additional Sessions Judge, Chennai, by order dated 17.02.2017.

Crl.OP.No.4529 of 2017 filed under Section 482 of the Criminal Procedure Code, to set aside the order dismissing the petition preferred under Section 311 of the Criminal Procedure Code to recall P.Ws.6 and 17 in Crl.M.P.No.24 of 2017 in S.C.No.255 of 2016 on the file of the learned XV Additional Sessions Judge, Chennai, by order dated 17.02.2017.

For Petitioner : Mr.R.John Sathyan

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

COMMON ORDER

These Criminal Original Petitions have been filed to set aside the order dated 17.02.2017 passed by the learned XV Additional Sessions Judge, Chennai, dismissing the petitions in Crl.M.P.Nos.46 and 24 of 2017 in S.C.No.255 of 2016, preferred under Section 311 of the Criminal Procedure Code to recall P.Ws.6, 17, 19 and 20.

2.The case of the prosecution is that the petitioner herein, who is the second accused in S.C.No.255 of 2016 on the file of the learned XV Additional Sessions Judge, Chennai, had

developed illicit intimacy with one Bimala Devi, the first accused. Due to the same, the husband of the said Bimala Devi frequently quarrelled with her. On 10.09.2015 at about 3.00 a.m., while the husband of Bimala Devi was asleep, the petitioner along with Bimala Devi, caused the death of her husband, by smothering him with a pillow followed by putting a Roof Cooling Slab on his head.

3.The learned counsel for the petitioner has submitted that P.Ws.1, 3 and 4, who are the daughters of the deceased and the first accused, did not support the case of the prosecution and they were treated hostile. Further, he submitted that on 05.11.2016, P.W.5 gave evidence in Hindi and it was translated by an official translator and since the defence was not familiar with the language, he could not effectively formulate the questions and hence he sought time till the next working day, but the said request was rejected by the learned Judge. He further stated that P.W.19 and P.W.20, who are the investigation officers were examined on 09.01.2017 and 27.01.2017 respectively, but since P.Ws.6 and 17 were not cross-examined, the investigation officers could not be cross-examined as the contradictions / corroborations using the statements recorded under Section 161 of Cr.PC had to be elicited only after the cross-examination of P.Ws.6 and 17. Stating so, he submitted that P.Ws.6, 17, 19 and 20 have to be cross-examined necessarily and the order denying to cross-examine them has to be set aside, as the trial itself would become a farce if the impugned order is allowed to stand.

4.Mr.C.Emalias, learned Additional Public Prosecutor, takes notice for the respondent.

5.It is seen from the materials available on record that the trial Judge had dismissed the petitions filed under Section 311 of Cr.PC, quoting the judgment of the Hon'ble Supreme Court in Vinod Kumar vs. State of Punjab [2015 (1) MLJ (CrL.) 288]. It is the submission of the learned counsel for the petitioner that even though P.W.19 and P.W.20, who are the investigation officers were examined on 09.01.2017 and 27.01.2017 respectively, since P.Ws.6 and 17 were not cross-examined, the investigation officers could not be cross-examined as the contradictions / corroborations using the statements recorded under Section 161 of Cr.PC had to be elicited only after the cross-examination of P.Ws.6 and 17. Considering the said submission and also the facts and circumstances of the case, the impugned order dated 17.02.2017 is quashed and the learned XV Additional Sessions Judge, Chennai, is directed to recall the witnesses as prayed for by the petitioner, ie. P.Ws.6, 17, 19 and 20, and cross-examine them on 04.04.2017. It is made clear

that no further adjournments shall be granted to the petitioner in this regard.

6.The Criminal Original Petitions are disposed of accordingly. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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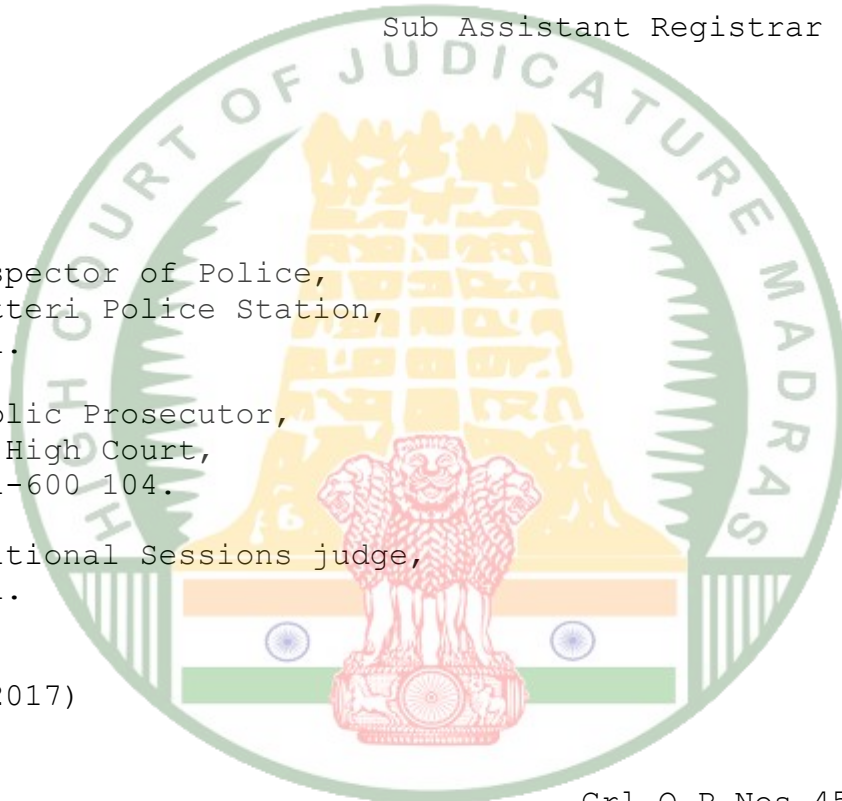
Sub Assistant Registrar

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To

1. The Inspector of Police,
P-2, Otteri Police Station,
Chennai.
2. The Public Prosecutor,
Madras High Court,
Chennai-600 104.
3. XV Additional Sessions judge,
Chennai.

AK(CO)
RS(23/03/2017)



Cr1.O.P.Nos.4528 and 4529
of 2017 and
Cr1.M.P.Nos.3406 and 3407
of 2017

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