

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2017

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.R.C.No.383 of 2017
and
CrI.MP.No.3538 of 2017

T.Balu ... Petitioner
vs

The State represented by
Station House Officer,
Tindivanam Police Station
(Cr.No.65/2015) ... Respondent

Criminal Revision case filed under sections 397 and 401 of Cr.P.C to call for the records pertaining to the order in C.M.P.No.6 of 2017 in Criminal Appeal No.36 of 2016 dated 31.01.2017 on the file of the Learned II Additional District and Sessions Judge, Tindivanam (II Additional District Court, Tindivanam) and set aside the same and allow this revision.

For Petitioner :Mr.R.Selvakumar

For Respondent :Mr.M.Ravichandran
Government Advocate
(crl.side)

O R D E R

Challenging the order passed by the trial Court in an application filed by the petitioner under section 391 of Cr.P.C, the present criminal revision case is filed. The petitioner was convicted by the learned Judicial Magistrate No.I, Tindivanam in C.C.No.177 of 2016 for the offences under Sections 279 and 304 (A) IPC and he was sentenced to undergo six months simple imprisonment for the offence under Section 304(A) IPC and no separate sentence was ordered for the offence under Section 279 of IPC. Challenging the above said conviction and sentence, the petitioner has filed an appeal in CrI.A.No.36 of 2016 on the file of the learned I Additional District and Sessions Judge, Tindivanam. Pending the appeal, the petitioner has filed an application under Section 391 of Cr.P.C for cross examining the witnesses viz., PWS.2, 3 and 4 and also the Post Mortem Doctor

as additional evidence. The petition has been filed on the ground that during the trial, the petitioner only cross examined PWS.1 and 3 and they have not cross examined PWS.2 and 4. Apart from that, during the trial, the prosecution only marked the Post Mortem certificate and the Doctor, who has conducted Post Mortem autopsy on the dead body, was not examined by the prosecution.

2. In the above circumstances, the petitioner filed an application for cross examining PWS.2, 3 and 4 and also for cross examining the Doctor, who conducted post mortem, as additional evidence. The above petition was contested by the prosecution on the ground that pending trial, the petitioner himself has filed an application under Section 311 of Cr.P.C for cross examining PWS.1, 2 and 4 and the said application was dismissed by the trial Court by an order dated 07.06.2016. That order was not challenged. Subsequently, the prosecution also marked the post mortem certificate for which the petitioner/accused given no objection and also made an endorsement. Considering the same, the post mortem certificate has already been marked by the trial Court. Now, in the above circumstances, the present application, which is filed only to fill up the lacuna, cannot be permitted. Considering the above material, the Court below dismissed the application by an order dated 31.01.2017. Challenging the same, the present criminal revision case has been filed.

3. Heard, Mr.R.Selvakumar, learned counsel appearing for the petitioner and Mr.M.Ravichandran, learned Government Advocate (Criminal Side) appearing for the respondent.

4. The petitioner has filed an application under section 391 of Cr.P.C not only examining the Doctor as an additional evidence, but also to cross examine PWS.2, 3 and 4 in the appeal. Pending trial, the petitioner had already filed an application under section 311 of Cr.P.C to re-open the case and to cross examine the above witnesses. The trial Court dismissed the application by an order dated 07.06.2016 and that order was not challenged. Subsequently, the trial Court convicted the accused and so far as the post mortem certificate is concerned, it is marked as an evidence, after the petitioner given no objection for marking the same and at that time also, he could not file any petition. Now pending appeal, the present application has been filed for cross examining PWS.2 to 4 and also the post mortem Doctor. Having failed the attempt before the trial Court by filing a petition under Section 311 of Cr.P.C now, the petitioner cannot once again file an application before

the Appellate Court seeking very same relief under Section 391 of Cr.P.C which is not permissible under law. The trial Court elaborately considered all the materials and dismissed the application. I find no irregularity or illegality in the order passed by the trial Court. Hence, the criminal revision case is liable to be dismissed. Accordingly it is dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. II Additional District and Sessions Judge,
II Additional District Court, Tindivanam.
2. The Station House Officer,
Tindivanam Police Station
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Selvakumar, Advocate Sr.15608

Cr1.R.C.No.383 of 2017

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srg 7/4/2017

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