

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2017

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.296 of 2017

and Crl.M.P.No.192 of 2017

1.Mani @ Marimuthu

2.Balamurugan

... Petitioners

Vs

The State, by
The Inspector of Police,
Jalagandapuram Police Station,
Salem District.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the order dated 23.6.2016 made in C.M.P.No.395 of 2015 in S.C.No.101 of 2013 on the file of the learned Assistant Sessions Judge, Mettur and set aside the same by allowing the criminal original petition.

For Petitioners: Mr.N.Manokaran

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

ORDER

The present criminal original petition has been filed to call for the records relating to the order dated 23.6.2016 made in C.M.P.No.395 of 2015 in S.C.No.101 of 2013 pending on the file of the learned Assistant Sessions Judge, Mettur, and set aside the same by allowing the criminal original petition.

2. It is the case of the petitioners that they have been arrayed as accused Nos.1 and 2 in S.C.No.101 of 2013 on the file of the learned Assistant Sessions Judge, Mettur. During the course of trial, in order to prove the illegal detention and assault made on them during their custody in the police station, the petitioners filed a petition in C.M.P.No.395 of 2015 in S.C.No.101 of 2013 under Section 91 Cr.P.C. before the learned Assistant Sessions Judge, Mettur, to send for the following documents viz.,

(i) Accident registers relating to I.P.No.C14615 and IP No.C14616 dated 4.2.2012 from the Chief Medical Officer, Government Hospital, Mettur.

(ii) Medical records dated 4.2.2012 relating to the petitioners from the Medical Record Officer, Government Mohan Kumaramangalam Hospital, Salem.

However, the said petition was dismissed by the learned Assistant Sessions Judge, Mettur, by order dated 28.11.2016. Hence, challenging the same, the petitioners have filed the present petition.

3. Learned counsel appearing for the petitioners submitted that the petitioners were taken to the police station without effecting formal arrest and they were kept in the police station illegally and they were assaulted brutally to accept the prosecution case. In order to prove the same, the said documents are sought to be summoned and the said documents are very vital to prove their case. However, the learned Assistant Sessions Judge, Mettur, without considering the same in proper perspective, dismissed the petition on the ground that the documents are totally irrelevant and the petitioners can take appropriate steps to produce the relevant records and it can be marked through them. Learned counsel further submitted that if the documents are not marked, it is very difficult for the petitioners to falsify the case of the prosecution and serious prejudice would be caused to them. In support of his contention, learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of State of Orissa vs. Debendra Nath Pandhi reported in (2005) 1 Supreme Court Cases 568, wherein, in para 25, it has been held as follows:-

"25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is 'necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the code'. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the

section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof."

Thus, he sought to set aside the order of the learned Assistant Sessions Judge, Mettur, dated 28.11.2016 made in C.M.P.No.395 of 2015 in S.C.No.101 of 2013.

4. On the above submission, I have heard the learned Additional Public Prosecutor and the learned Additional Public Prosecutor fairly submitted that there cannot be any bar for the petitioners to summon those documents so as to strength their case.

5. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record including the order of the trial Court.

6. On a perusal of the materials available on record and in view of the decision of the Hon'ble Supreme Court cited supra, I am of the opinion that the petitioners are entitled to mark those documents. Further, as rightly submitted by the learned Additional Public Prosecutor, there cannot be any bar for the petitioners to mark those documents so as to strength their case. However, without considering those aspects and without giving valid reasonings, the trial Court dismissed the petition filed by the petitioners.

7. For all the above reasons, I am of the opinion that the order of the learned Assistant Sessions Judge, Mettur, dated 23.6.2016 made in C.M.P.No.395 of 2015 in S.C.No.101 of 2013 is liable to be set aside and accordingly, set aside and the criminal original petition is allowed. The learned

Assistant Sessions Judge, Mettur, is directed to consider the claim of the petitioners and pass appropriate orders. The said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

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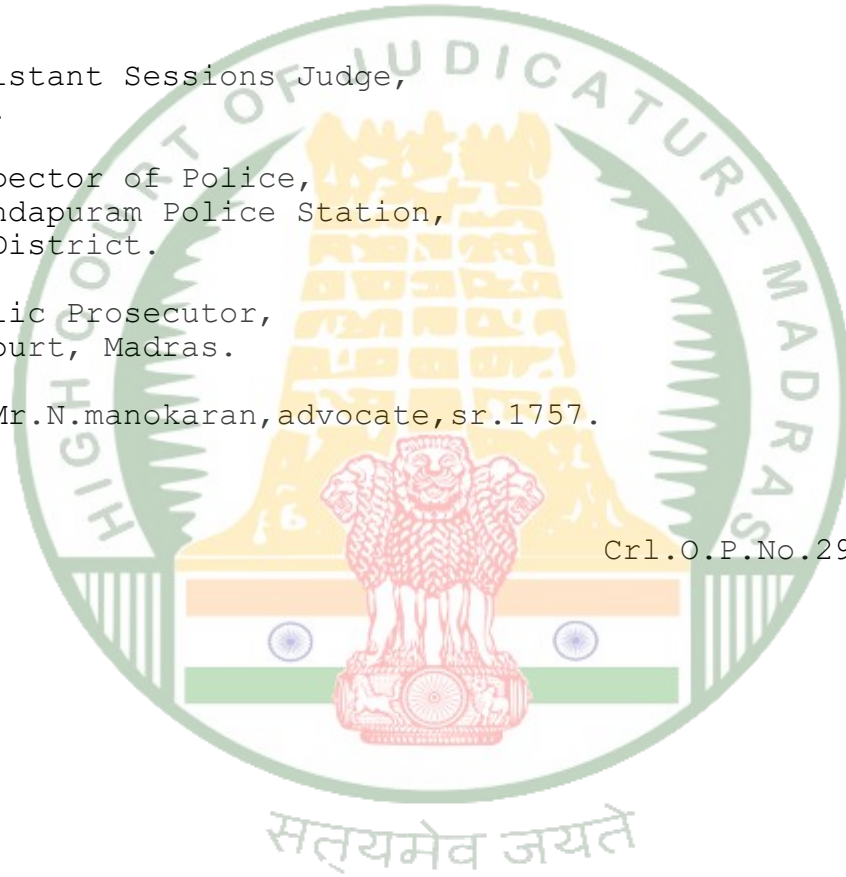
Sub Asst. Registrar

To

- 1.The Assistant Sessions Judge,
Mettur.
 - 2.The Inspector of Police,
Jalagandapuram Police Station,
Salem District.
 - 3.The Public Prosecutor,
High Court, Madras.
- +1 cc to Mr.N.manokaran,advocate,sr.1757.

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