

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 17.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH**Cr1.O.P. (MD)No.4454 of 2017**

State represented by
The Inspector of Police,
Fort Police Station,
Trichy City.

In Crime No.718 of 2015

: Petitioner/Complainant

Vs.

Ramachandran

: Respondent/Accused

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to set aside the order made in Cr.M.P.No.2265/2016 in S.C.No.23/2016, dated 06.01.2017 on the file of the Principal District Sessions Judge, Trichy.

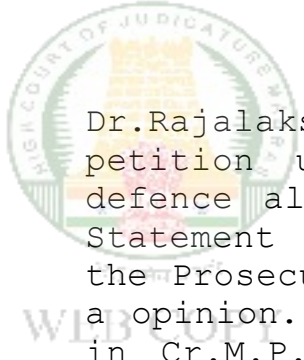
For Petitioner : Mr.K.Anbarasan
Government Advocate (Cr1.side)

O R D E R

Ramachandran, who is the sole accused is facing prosecution in S.C.No.23 of 2016 under Section 302 IPC on the file of the Sessions Court, Thiruchirappalli.

2.During the Course of Trial, the prosecution examined one Dr.Rajalakshmi (P.W.9) in Chief on 02.09.2016. Dr.Rajalakshmi had admitted the deceased in the hospital and had issued Accident Register - Ex.P.7 by noting down two injuries. During the examination in chief of Dr.Rajalakshmi, the Public Prosecutor in-charge of the case wanted to show her the weapon that was allegedly used by the accused to commit the murder and ask her whether the injuries in the Wound Certificate could have been caused by the said weapon. This was strongly objected to by the accused and therefore, further examination of Dr.Rajalakshmi (P.W.9) was stopped and the case was adjourned to another date.

3.Thereafter, the prosecution filed Cr.M.P.No.2265 of 2016 in S.C.No.23 of 2016 under Section 311 Cr.P.C to recall Dr.Rajalakshmi/P.W.9. The defence took a stand that a petition under Section 311 Cr.P.C can be filed to recall the witness, only if the witness has been examined in full and in this case, since



Dr.Rajalakshmi's (P.W.9) examination has not been completed, a petition under Section 311 Cr.P.C is not maintainable. The defence also contended that since the police in the 161 Cr.P.C. Statement recorded from Dr.Rajalakshmi had not shown the weapon, the Prosecutor cannot show the weapon in the Court and ask her for an opinion. The Trial Judge by the impugned order dated 06.01.2017 in Cr.M.P.No.2265 of 2016 in S.C.No.23 of 2016 has upheld the contention of the defence and has dismissed the same. Challenging which, the prosecution is before this Court.

4. As regards the first reason given by the learned Sessions Judge that a petition under Section 311 Cr.P.C., can be filed only after the witness has been examined in full and since Dr.Rajalakshmi has not been examined in full, the question of filing a petition under Section 311 Cr.P.C. does not arise, is indubitably correct. A petition under Section 311 Cr.P.C can be filed to recall a witness only after the witness has been examined in full, namely, "chief, cross and re" or for examining a fresh witness, who has not been included in the memorandum of evidence. In this case, examination of Dr.Rajalakshmi has not been completed and therefore, the petition filed by the prosecution under Section 311 Cr.P.C., is not maintainable. To that extent, the order passed by the Sessions Judge is correct.

5. As regards the second reasoning given by the Sessions Judge that the Prosecutor cannot ask any question beyond Section 161 Cr.P.C. statement, the reasoning is *per se* fallacious. Under ordinary circumstances, this Court would have ordered notice on the accused before passing any order in this petition. But, however, in this case, since the well settled legal issue has been misunderstood by the Sessions Judge, this Court is of the view that it is not necessary to issue notice to the accused before passing orders in this petition.

6. The Prosecutor need not nail himself on the cross of 161 Cr.P.C. statement. If any question put by the Prosecutor is objected to by the defence, the trial Court should record the objections and proceed with the examination, without giving any findings on the objections at that stage. This has been very clearly held by the Hon'ble Supreme Court in **Bipin Shantilal Panchal v. State of Gujarat** reported in **2001 (2) Supreme Today 65**.

7. The objections raised by the defence can be considered by the trial Court only at the time of appreciation of the evidence and while delivering the Judgment. The appellate Court can also re-appreciate the objections, while hearing the appeal. Therefore, this Court directs the Sessions Judge to proceed with the examination of Dr.Rajalakshmi (P.W.9) and after recording the objections raised by the accused, record the answer given by Dr.Rajalakshmi with regard to the weapon in question and proceed



to appreciate the same, while deciding the case finally.

8. With the above direction, this petition is ordered accordingly.

Sd/-

Assistant Registrar (Co)

/True Copy/

Sub Assistant Registrar

To

The Principal District Sessions Judge,
Trichy.

Mrn/RR

AE/KP/SAR4/28.04.2017/3P/2C

Order made in
Cr1.O.P. (MD) No. 4454 of 2017
Dated: 17.04.2017