



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE P.N.PRAKASHCrl.O.P.(MD) No.18961 of 2016

Arunachalampillai

... Petitioner/Defacto Complainant

-vs-

1.State rep. by

Deputy Superintendent of Police,

Ambasamuthiram,

Tirunelveli District

...Respondent No.1/Petitioner/Complainant

2.Ganapathy

3.Palavesam

4.Shanmugathammal

... Respondents/Respondents/A1 to A3

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to allow the Criminal original Petition by setting aside the order dated 16.09.2016 passed in Crl.M.P.No.1213 of 2016 in S.C.No.516 of 2015 on the file of the Session Judge (Mahila Court), Tirunelveli.

For Petitioner : Mr.Joseph Theathumus Jerome

For Mr.S.Alagusundar

For R1 : Mr.K.Anbarasan

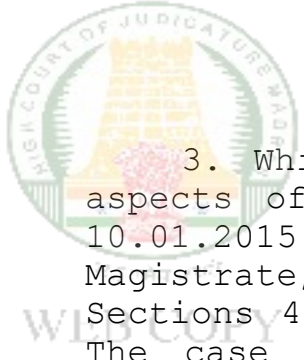
Govt. Advocate (Crl.Side)

For R2 to R4 : Mr.A.Thiruvadikumar

ORDER

This petition has been filed, seeking to set aside the order dated 16.09.2016 passed in Crl.M.P.No.1213 of 2016 in S.C.No.516 of 2015 on the file of the Session Judge (Mahila Court), Tirunelveli.

2. One Vijayalakshmi, who was married to Ganapathy, died on 01.08.2013 in her matrimonial home, in connection with which, the respondent police registered a case in Crime No.361 of 2013 under Section 174(3) Cr.P.C. and after inquest, sections were altered under Sections 498(A) and 304(B) IPC. During the course of investigation, the Investigating Officer appears to have collected four letters, purported to have been written by the deceased to her father and those letters were sent through the learned Magistrate, Ambasamuthiram along with the admitted handwritings of the deceased to the Tamil Nadu Forensic Laboratory for the opinion of a Handwriting Expert.

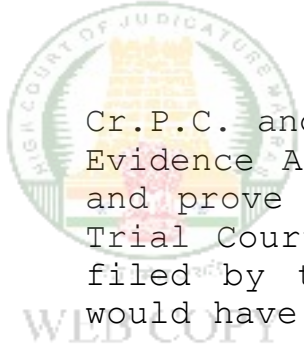


3. While so, the Investigating Officer proceeded with other aspects of the investigation and completed the investigation on 10.01.2015 and filed a charge sheet before learned Judicial Magistrate, Ambasamuthiram on 06.06.2015 for offences under Sections 498(A) and 304(B) IPC against Ganapathy and his parents. The case was taken on file as PRC No.29 of 2015 and on the appearance of the accused before the Court, they were furnished with copies of charge sheet and other accompanied documents and thereafter, the case was committed to the Court of Sessions, which was taken on file as S.C.No.516 of 2015 and was made over to learned Session Judge (Mahila Court), Tirunelveli for trial.

4. Trial began with the examination of prosecution witnesses from 09.02.2016 to 25.05.2016 and the prosecution completed examination of the witnesses on 25.05.2016. The accused were questioned under Section 313 Cr.P.C. on 10.06.2016. While so, the Handwriting Expert sent his report dated 31.12.2015 to the learned Judicial Magistrate, Ambasamuthiram, who received the same on 11.02.2016 and subsequently, forwarded it to Mahila Court on 12.02.2016. The Public Prosecutor, who was in-charge of the trial appears to have marked the said report through the Investigating Officer as Ex.P22. Thereafter, good sense prevailed upon him and he realized the mistake and filed a petition under Section 311 Cr.P.C. in CrI.M.P.No.1213 of 2016 in S.C.No.516 of 2015 for examining the Handwriting Expert as additional witness and for proving the report and the connected documents.

5. The accused objected to the petition on the ground that the prosecution cannot be permitted to fill up the lacuna. The Trial Judge, by impugned order dated 16.09.2016 dismissed the petition filed by the prosecution, challenging which, strangely the State has not chosen to come to this Court, but the father of the deceased has approached this Court,

6. At the outset, this Court deprecates the lackadaisical attitude of the State in not taking up the matter immediately to this Court and leaving it for the father of the deceased to knock at the doors of this Court for justice. From the dates and events, it is clear that the Investigating Officer had collected four letters said to have been written by the deceased and had sent the same along with the admitted handwritings of the deceased through the learned Judicial Magistrate, Ambasamuthiram to the Tamil Nadu Forensic Laboratory for expert opinion. For some reasons, the expert opinion was delayed and before it could reach the Magistrate, the Investigating Officer had filed the final report. After the Magistrate forwarded the report to the Trial Court, <https://hcservices.mca.gov.in/services> the same was marked through the Investigating Officer, who is not an expert competent to testify about it. The Handwriting Expert does not come within the ambit of Section 293



Cr.P.C. and his opinion is relevant under Section 45 of the Indian Evidence Act and he is required to depose before the Trial Court and prove his report in the manner known to law. Strangely, the Trial Court had missed this aspect and had dismissed the petition filed by the prosecution, which, in the opinion of this Court, would have led to travesty of justice.

7. In the result, this Criminal Original petition is allowed and the order passed by the learned Session Judge (Mahila Court), Tirunelveli in CrI.M.P.No.1213 of 2016 in S.C.No.516 of 2015 is hereby set aside. The Trial Court is directed to summon the Handwriting Expert and a copy of the report and other documents shall be furnished to the accused in advance so that they can cross examine the Expert after due preparation. Consequently, connected miscellaneous petition is closed.

sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

1. The Session Judge (Mahila Court),
Tirunelveli.
2. The Deputy Superintendent of Police,
Ambasamuthiram,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.A.THIRUVADIKUMAR, Advocate SR.NO.13231

+1cc to M/S.S.ALAGUSUNDAR, Advocate SR.NO.13068

CrI.O.P. (MD) No.18961 of 2016

07.03.2017

JM AM/SV MMS/SAR 3/10.03.2017/6C/3P