



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2017

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WEB COPY

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. (MD) No.21336 of 2016

Satham Hussain @ Karuppu Satham Hussain

... Petitioner/A1

-vs-

The Inspector of Police,
Serious Crimes Squad,
Madurai City Police,
K.Pudur Police Station,
Madurai.

... Respondent/Complainant

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to call for the entire records pertaining to the order passed by the Learned III Additional District and Sessions Judge and Special Court for PCR Cases Madurai in Cr.M.P.No.2850 of 2016 in Spl. S.C.No.17 of 2016 dated 30.09.2016 and set aside the same.

For Petitioner : Mr.S.M.A.Jinnah
For Respondent : Mr.A.P.Balasubramani
Govt. Advocate (Crl.Side)

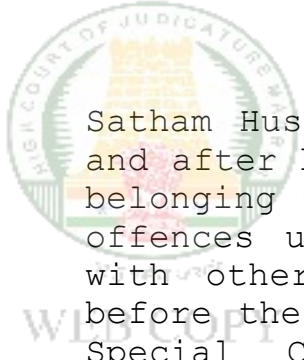
Reserved on	Pronounced on
19.04.2017	26.04.2017

ORDER

This petition has been filed to call for the entire records pertaining to the order passed by the learned III Additional District and Sessions Judge and Special Court for PCR Cases, Madurai in Cr.M.P.No.2850 of 2016 in Spl. S.C.No.17 of 2016 dated 30.09.2016 and set aside the same.

2. The petitioner is facing trial in Spl. S.C.No.17 of 2016 before the learned III Additional District and Sessions Judge and Special Court for PCR Cases, Madurai for offences under Sections 379, 342, 364, 397, 302 r/w 34 of IPC and Section 3(2)(v) of SC/ST

3. It is the case of the prosecution that on 29.03.2015,



Satham Hussain/A1 and Suresh/A2 abducted the deceased Karuppasamy and after brutally murdering him, took away the ornaments and cash belonging to him. Since the deceased Karuppasamy was a Dalit, the offences under Section 3(2)(v) of SC/ST Act were invoked along with other provisions of IPC and therefore, the trial is now before the learned III Additional District and Sessions Judge and Special Court for PCR Cases, Madurai. During trial, the prosecution filed an application in Cr.M.P.No.2850 of 2016 in Spl. S.C.No.17 of 2016 under Section 311 Cr.P.C. to examine four additional witnesses, namely, Thilagar, Nagarajan and Chandrakanth, including Mrs.R.Selvanayagi Kannan, Judicial Magistrate No.1, Madurai, who had conducted test identification parade. In the petition, the prosecution has averred that the 161 (3) statement of three witnesses, namely, Thilagar, Nagarajan, Chandrakanth were already recorded and were furnished to the accused, but inadvertently, their names were not included in the memo of evidence accompanying the charge sheet. That apart, the prosecution wanted to examine the Judicial Magistrate, who had conducted the test identification parade. The accused objected to the petition filed by the prosecution, on the ground that the petition has been filed by the Inspector of Police, Serious Crimes Squad and that the investigation for offences under SC/ST Act can be conducted only by the Deputy Superintendent of Police and not by the Inspector of Police. The Trial Court allowed Cr.M.P.No.2850 of 2016 in Spl. S.C.No.17 of 2016 on 30.09.2016, challenging which the 1st accused is before this Court.

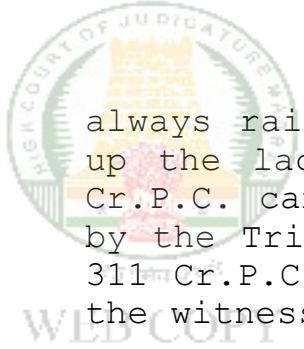
4. Heard the learned counsel for the petitioner/A1 and the learned Government Advocate (Crl.Side) appearing for the respondent.

5. Learned counsel for the petitioner submitted that the prosecution cannot fill up lacuna by examining additional witnesses as that would cause serious prejudice to the case of the accused. He also submitted that the Inspector of Police cannot conduct investigation for offences registered under SC/ST Act and only the Deputy Superintendent of Police can conduct the investigation and therefore, the petition signed by the Inspector of Police has been vitiated.

6. Per contra, learned Government Advocate (Crl.Side) refuted the contention.

7. This Court gave its anxious consideration to the rival submissions.

8. The question of filling lacuna came up for consideration before the Supreme Court in **Rajendra Prasad vs. The Narcotic Cell** **through its Officer in-Charge, Delhi, [1999 (3) Crime 106 (SC)]**, wherein the Supreme Court has held that whenever an application is filed by the prosecution to examine a witness, the defence will



always raise the plea that the witness is being examined to fill up the lacuna. It is trite law that petition under Section 311 Cr.P.C. can be filed at any time before the judgment is delivered by the Trial Court. While dealing with the petition under Section 311 Cr.P.C., the Court should have to see whether the evidence of the witness is essential for just decision of the case.

9. In this case, the 161(3) statement of three witnesses were already furnished to the accused, but inadvertently their names were not included in the memo of evidence. In the petition filed by the prosecution, the nature of evidence that is going to be given by the said four witnesses, has been vividly stated. The petition is in two parts, namely, the 1st part contains the averments in support of the prayer and the annexure contains the name and details of the witnesses. The 1st part has been signed by the Special Public Prosecutor in-charge of the case and the annexure has been signed by the Inspector of Police, Serious Crime Squad. The argument of the learned counsel for the petitioner that, for offences under SC/ST Act, only the Deputy Superintendent of Police can conduct investigation and therefore, signing of the petition by the Inspector of Police would vitiate the prayer, deserves to be stated only to be rejected. There is an ocean of difference between investigation and trial. Filing of a petition under Section 311 Cr.P.C. for examination of a person as a witness by the Trial Court can, by no stretch of imagination, fall in the domain of investigation. The provisions of Section 311 Cr.P.C. can be invoked only during trial or enquiry before the Court and not at the time of investigation. Therefore, there is absolutely nothing improper or illegal in the Inspector of Police, who is in-charge of prosecuting the offenders before the Trial Court, signing the petition under Section 311 Cr.P.C.

10. In the result, this petition is devoid of merits and the same is accordingly dismissed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To:

1. The III Additional District and Sessions Judge
and Special Court for PCR Cases,



2. The Inspector of Police,
Serious Crimes Squad,
Madurai City Police,
K.Pudur Police Station,
Madurai.

3. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

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TE/RSK/SAR-III : 27/04/2017 : 4P/4C

PRE-DELIVERY ORDER IN
Crl.O.P. (MD) No.21336 of 2016
26.04.2017