



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.05.2017

CORAM:

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THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.220 of 2017

and

CRL MP(MD)No.1916 of 2017

Orders Reserved on 24.03.2017

1.Samuthuiraraj

2.Dhanammal

3.Natarajan

: Petitioners / A1, A3 & A4

Vs.

State Represented by,

Inspector of Police,

Kuruvikulam Police Station,

Cr.No.114/2010,

Tirunelveli District.

: Respondent / Complainant

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records from the lower Court and to duly set aside order passed in Cr.M.P.No.243 of 2016, dated 21.02.2017 in S.C.No.123 of 2011, on the file of the Assistant Sessions Judge, Sankarankovil, Tirunelveli District.

For Petitioners

:Mr.V.Kadirvelu, Sr.Counsel

For Mr.K.Prabhu

For Respondent

:Mr.P.Kandasamy

Government Advocate(Crl. Side)

O R D E R

This Revision has been filed praying to set aside the order passed in Cr.M.P.No.243 of 2016, dated 21.02.2017 in S.C.No.123 of 2011, by the learned Assistant Sessions Judge, Sankarankovil, Tirunelveli District.

2. The respondent Police has filed the final report against the petitioners 1 and 2 and also one Iyyappan, as Accused Nos.1, 3 and 2 respectively, for the offences under Sections 294(b), 342, 323, 324, 326, 307 r/w. 34 of IPC., before the Judicial Magistrate's Court at Sankarankovil, which took on file as P.R.C.No.14 of 2011 and latter on, the said case was committed to Sessions Court and was taken on file as S.C.No.123 of 2011 and made over the learned Assistant Sessions Judge, Sankarankovil, for further proceedings in this case.



3. The learned Assistant Sessions Judge, Sankarankovil, framed charges against A1 to A3 and the trial was commenced before the said Court by examining P.Ws.1 to 3, who were examined in chief by the prosecution and their cross-examination was deferred on the side of the accused persons. During the chief examination of the witnesses it appears to the prosecution that the Petitioner No.3 herein has also committed the offence under Sections 294(b) and 307 r/w 34 of IPC. Then, the 3rd petitioner has been impleaded as 4th accused in this case on filing application under Section 319 Cr.P.C., by the prosecution and copies of the documents were furnished to him and charges were also framed against him. Before that, the second accused viz., Iyappan was reported dead and the charges against that accused stood abated, as per the order, dated 06.01.2016 of the trial Court. Besides framing of the charges against the 4th accused, existing charges against A1 and A3 were also amended by the trial Court. While the said case is pending for examination of the witnesses, the Revision Petitioners herein filed CrI.M.P.No.243 of 2016, for conducting fresh trial and the trial Court has dismissed the above application, after hearing both sides. The present Revision is preferred by the petitioner herein against the order of dismissal, dated 21.02.2017, passed by the learned Assistant Sessions Judge, Sankarankovil, to call for the records from the trial Court and to set aside the impugned order, dated 21.02.2017 of the learned Sessions Judge, Sankarankovil in Cr.M.P.No.243 of 2016.

4. The learned Government Advocate (crl.side) appearing for the respondent filed a counter statement in the Revision itself and both sides agreed to dispose of this Revision based on the available records, since the trial of the case is pending for more than five years, though the impugned order was passed on 21.02.2017.

5. The learned counsel appearing for the Revision Petitioners would contend that once new charges have been framed, the accused must be questioned whether any witnesses have been re-examined.

6. The learned Government Advocate (crl.side) appearing for the respondent would contend that the trial Court has rightly dismissed the relief sought for in the petition regarding the Petitioner Nos.1 and 2 and allowed the relief regarding the 3rd petitioner / 4th accused and hence, it is not necessary for re-trial against the Petitioner Nos. 1 and 2 and hence, the said request is liable to be rejected.

7. Perused the materials on record and heard and considered the rival submissions advanced by either side.

8. Admittedly, the 3rd petitioner herein is impleaded as 4th respondent in the pending trial case, on the basis of the evidence, particularly, the chief examination of the prosecution witnesses on application filed by the prosecution. P.Ws.1 to 3 were examined in chief prior to impleading the 3rd petitioner, as 4th accused, and cross-examination of the above witnesses was deferred by A1 to A3. After commencement of the trial, the second



accused was reported dead and charges framed against the said accused stood abated, as per the order of the trial Court. P.Ws.1 to 3 have not been cross-examined by A1 to A3 and P.W.1 was reported dead. After adding the 3rd petitioner herein, as the 4th accused, the trial Court framed charges against the newly added 4th accused, after furnishing the copies of documents and hearing the 4th accused and also amended the charges against the first and second petitioners herein. There is no dispute that the newly added accused / 3rd petitioner herein is entitled to have denovo trial / fresh trial, as per Section 319(4)(a) of Cr.P.C., which mandates that the proceedings in respect of such person (newly added accused) shall be commenced afresh and the witnesses reheard. The trial Court also in its impugned order has directed to have denovo trial / fresh trial against the 3rd petitioner / 4th accused in this case. A1 and A3 / Petitioners 1 and 2 are not entitled to have fresh trial after amendment of charges, since the cross-examination of P.Ws.1 to 3 was already deferred by A1 and A3. There is no prejudice to the accused in their defence or prosecution in conducting the case after such alteration or amendment of charges has been made, as per Section 216(3) of Cr.P.C., against the 1st and 2nd accused. In the above stated scenario and also the circumstances of the case, this Court is not inclined to interfere with the impugned order, dated 21.02.2017, passed in Cr.M.P.No.243 of 2016, by the learned Sessions Judge, Sankarankovil.

9. In the result, the Revision stands dismissed. The impugned order of stay, which was made absolute in Crl.M.P(MD) No.1916 of 2017, dated 24.03.2017, is recalled.

Sd/-

ASSISTANT REGISTRAR(RECORDS)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

- 1.The Assistant Sessions Judge,
Sankarankovil,Tirunelveli District.
 - 2.The Inspector of Police,
Kuruvikulam Police Station,Tirunelveli District.
 - 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
 4. The Record Keeper,
Criminal Section Record, Madurai Bench of Madras High Court.
- +1 CC TO M/S.K.PRABHU, ADVOCATE,SR NO.56696

MPK

MAS/MR/SAR1:24.05.2017:3P-6C

Pre-Delivery Order made in
Crl.RC (MD) No.220 of 2017
Dated:-



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18.05.2017